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Presidential Documents

Title 3—

The President

Proclamation 8165 of August 20, 2007

National Ovarian Cancer Awareness Month, 2007

By the President of the United States of America

A Proclamation

National Ovarian Cancer Awareness Month is an opportunity to underscore our commitment to fighting ovarian cancer and to finding a cure for this deadly disease.

Ovarian cancer is one of the leading causes of cancer-related deaths among women in our country, and the risk of developing it increases with age and a family history of this disease. Other risk factors include a history of endometrial, colon, or breast cancer, and obesity. Because early detection is crucial in treating ovarian cancer and its symptoms can be difficult to identify, women should consult their doctors about personal risk factors, early warning signs, and screening options.

Our Nation has made progress in the fight against ovarian cancer, yet much more work remains. I signed the ''Gynecologic Cancer Education and Awareness Act of 2005,'' or ''Johanna's Law,'' which supports a national campaign to raise awareness among women and health care providers regarding gynecologic cancers. In FY 2007, the National Institutes of Health will invest an estimated $102 million into ovarian cancer research through the National Cancer Institute and other institutes. In addition, the Centers for Disease Control and Prevention will dedicate nearly $5 million. We will continue to commit our resources to seek better ways to prevent, detect, and ultimately cure ovarian cancer.

During National Ovarian Cancer Awareness Month, Americans remember those who have lost their lives to ovarian cancer, and we honor the courage and strength of those who continue to fight this disease. We also recognize the dedicated medical professionals and researchers whose tireless efforts help provide a brighter, healthier future for women.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 2007 as National Ovarian Cancer Awareness Month. I call upon government officials, businesses, communities, health care professionals, educators, volunteers, and the people of the United States to continue our Nation's strong commitment to preventing and treating ovarian cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of August, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 07–4155
Filed 8–22–07; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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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 THE TREASURY

5 CFR Part 3101

RINs 1550–AC03, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Department), with the concurrence of the Office of Government Ethics (OGE), is amending the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury (Treasury Supplemental Ethics Regulations). The final rule revises the circumstances under which covered Office of Thrift Supervision (OTS) employees may obtain credit cards and loans secured by a principal residence from OTS-regulated savings associations or their subsidiaries. This amendment also modifies rules on disqualifications.

DATES: *Effective Date:* August 23, 2007.

FOR FURTHER INFORMATION CONTACT: Ira S. Kaye, Senior Ethics Counsel, Office of the Assistant General Counsel (General Law and Ethics), Department of the Treasury, Room 2023, Washington, DC 20220, (202) 622–1963, or Elizabeth Moore, Ethics Counsel, OTS Litigation Division, 1700 G Street, NW., Washington, DC 20552, (202) 906–7039.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Government Ethics (OGE) has issued rules setting out the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 (Standards). The Treasury Supplemental Ethics Regulations at 5 CFR part 3101 supplement these Standards, and were issued to minimize potential conflicts of interest by Department of Treasury employees. The Treasury Supplemental Ethics Regulations set out additional rules for Office of Thrift Supervision (OTS) employees at 5 CFR 3101.109. These rules were designed to prevent employees of OTS from taking actions that violate (or appear to violate) conflict of interest laws or certain criminal statutes, or that create (or may create) an appearance of a loss of impartiality.

The Treasury Supplemental Ethics Regulations generally prohibit covered OTS employees from seeking or obtaining loans or other extensions of credit from any OTS-regulated savings association or from an officer, director, employee or subsidiary of such a savings association. 5 CFR 3101.109(c)(1).[1] This prohibition extends to the spouses and minor children of covered OTS employees, unless the loan or extension of credit meets specified standards.[2]

The current Treasury Supplemental Ethics Regulations prescribe an exception to this general prohibition for credit card accounts. Except for examiners, a covered OTS employee (or a spouse or minor child of a covered OTS employee), may obtain and hold a credit card from an OTS-regulated savings association (or its subsidiary) if the credit card is issued on terms and conditions no more favorable than those offered to the general public. 5 CFR 3101.109(c)(3)(i) (2006). An examiner (or a spouse or minor child of an examiner) may obtain and hold a credit card from an OTS-regulated savings association (or its subsidiary) only if: (1) The savings association is not headquartered in the examiner's region; (2) the examiner is not assigned to examine the savings association; (3) the terms and conditions are no more favorable than those offered to the general public; and (4) the examiner submits a written disqualification from examining that savings association. 5 CFR 3101.109(c)(3)(ii) (2006).

The more rigorous credit card rule for examiners was designed to prevent violations of 18 U.S.C. 213, a criminal statute, which prohibits an examiner from accepting a loan or gratuity from a financial institution that he or she examines. Until December 2003, 18 U.S.C. 213 (2000) provided:

> Whoever, being an examiner or assistant examiner of * * * financial institutions the deposits of which are insured by the Federal Deposit Insurance Corporation * * * accepts a loan or gratuity from any bank, branch, agency, corporation, association or organization examined by him or from any person connected [t]herewith, shall be fined under this title or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given, and shall be disqualified from holding office as such examiner.

A related criminal statute, 18 U.S.C. 212, prohibits officers, directors, or employees of financial institutions from making or granting such loans or gratuities.

On December 19, 2003, the President signed the Preserving Independence of Financial Institution Examinations Act of 2003, Public Law 108–198, which amended 18 U.S.C. 212 and 213. The new law preserves the general prohibition against an examiner accepting a loan or gratuity from a financial institution under examination, but creates two exceptions to the criminal bar. Under the new law, it is no longer a crime for an examiner to hold an open-end consumer credit card account or obtain a loan secured by residential real property that is used as the principal residence of the examiner if:

> (A) The applicant satisfies any financial requirements for the credit card account or residential real property loan that are generally applicable to all applicants for the same type of credit card account or residential real property loan;
>
> (B) the terms and conditions applicable with respect to such account or residential real property loan, and any credit extended to the examiner under such account or residential real property loan, are no more favorable generally to the examiner than the terms and conditions that are generally applicable to credit card accounts or residential real property loans offered by the same financial institution to other borrowers [or] cardholders in comparable circumstances

[1] Covered OTS employees include OTS examiners, employees in positions at OTS grade 17 and above, and other designated OTS employees. 5 CFR 3101.109(a).

[2] A spouse or a minor child may obtain a loan or extension of credit if: (1) The loan is supported only by the income or independent means of the spouse or child; (2) the loan is obtained on terms and conditions no more favorable than those offered to the general public; and (3) the covered OTS employee does not participate in the negotiation of the loan, or serve as co-maker, endorser, or guarantor. 5 CFR 3101.109(c)(2). This final rule makes a clarifying change to the second of these conditions to conform it to the statutory conditions in 18 U.S.C. 212(c)(4)(A) and (B), as amended.

under open end consumer credit plans or for residential real property loans; and

(C) with respect to residential real property loans, the loan is with respect to the primary residence of the applicant.[3]

Other types of loans, such as overdraft protection not secured by a principal residence, vacation home loans, car loans, and personal loans still are subject to the prohibitions in 18 U.S.C. 212 and 213. It remains a crime for an examiner to examine an institution that has extended those types of credit to him or her.

The Department has reexamined the restrictions on credit cards and loans on principal residences for covered OTS employees, and their spouses and minor children, in light of these recent statutory changes and is making several revisions to the Treasury Supplemental Ethics Regulation pursuant to its rulemaking authority under 18 U.S.C. 212(b) and 5 CFR Part 2635. In making these revisions, the Department has consulted with the other financial institution regulatory agencies. To the extent that the revised provisions apply to covered OTS employees, their spouses and minor children, the Department has determined, with OGE concurrence, that the regulations are needed so that a reasonable person would not question the impartiality and objectivity with which agency programs are administered. *See* 5 CFR 2635.403(a). Further, with respect to the revised restrictions and prohibitions on the holding of financial interests (indebtedness, that is certain loans and extensions of credit) by covered OTS employees' spouses and minor children, the Department has determined that there is a direct and appropriate nexus between such restrictions and prohibitions as applied to the spouses and minor children, and the efficiency of covered employees' service.

II. Rule Changes

A. Credit Card Loans

The Department has reviewed the extent to which credit cards present conflicts of interest for OTS examiners and has concluded that, in most instances, neither obtaining nor holding a credit card creates a conflict of interest or presents the likelihood of a loss of impartiality by an OTS examiner. Individuals usually do not negotiate the terms and conditions of a credit card account. Rather, relevant terms and conditions, including credit limits, fees, and rates, are generally set according to various income and creditworthiness standards.

Moreover, the present regulatory restriction may have a detrimental impact on OTS's ability to supervise certain operations. OTS supervises a small number of thrifts with large credit card portfolios. Due to the scope of these institutions' credit card operations, OTS has experienced some difficulty in fielding and maintaining appropriate examination teams for the institutions. Accordingly, the Department believes that the examiner restriction should be revised to ensure that OTS Regional and Washington offices have more flexibility to assign projects to examiners.[4]

The Department is amending the Treasury Supplemental Ethics Regulations to permit examiners (and their spouses and minor children) to obtain credit cards from OTS-regulated savings associations (or their subsidiaries) on the same basis as other covered OTS employees. Under the final rule, any covered OTS employee (or spouse or minor child of a covered OTS employee) may obtain and hold a credit card account established under an open-end consumer credit plan and issued by an OTS-regulated savings association (or its subsidiary) subject to certain conditions. These conditions were designed to reflect the new statutory exemption at 18 U.S.C. 212.

Specifically, the final rule states at new amended paragraph (c)(3)(i) of § 3101.109 that covered OTS employees, their spouses, and minor children may obtain and hold a credit card established under an open-end consumer credit plan and issued by an OTS-regulated savings association or its subsidiary if: (1) The cardholder satisfies all financial requirements for the credit card account that are generally applicable to all applicants for the same type of credit card account; and (2) the terms and conditions applicable with respect to the account and any credit extended to the cardholder under the account are no more favorable generally to that cardholder than the terms and conditions that are generally applicable to credit card accounts offered by the same savings association (or the same subsidiary) to other cardholders in comparable circumstances under open-end consumer credit plans. These requirements are modeled on the conditions in 18 U.S.C. 212, as amended, and are substantially identical to the condition applicable to credit card accounts permitted under the current rules, which provides that credit cards must be ''issued and held on terms and conditions no more favorable than those offered [to] the general public.'' *See* 5 CFR 3101.109(c)(3)(i) and (c)(3)(ii)(C) (2006).

Under the current Treasury Supplemental Ethics Regulations, an examiner must disqualify himself from examining a savings association if the examiner (or the spouse or minor child of an examiner) has obtained a credit card from that savings association or its subsidiary. 5 CFR 3101.109(c)(3)(ii)(D) (2006). Today's final rule no longer requires such a disqualification every time the OTS examiner, spouse, or minor child obtains a credit card loan from a particular thrift or its subsidiary.[5] Instead, the final rule in new amended paragraph (c)(3)(i)(C) requires a covered OTS employee to submit a written disqualification if the employee (or his or her spouse or minor child) as cardholder becomes involved in an ''adversarial dispute'' with the issuer of the credit card account. For the purposes of this rule, a cardholder is involved in an adversarial dispute if he or she is delinquent in payments on the credit card account; the issuer and the cardholder are negotiating to restructure the credit card debt; the issuer garnishes the cardholder's wages; the cardholder disputes the terms and conditions of the account; or the cardholder becomes involved in any disagreement with the issuer that casts doubt on the employee's ability to remain impartial with respect to the savings association or its subsidiaries. Preliminary inquiries regarding the accuracy of billing information or billed items are not, but may become, an adversarial dispute.

Under amended paragraph (c)(3)(i)(C) of the final rule, a written disqualification must state that the covered OTS employee will not participate in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting the savings association or its subsidiaries. This disqualification will

[3] 18 U.S.C. 212(c)(4), as amended.

[4] On December 23, 2003, upon the enactment of the revised statute, the OTS Director granted a blanket waiver of the credit card regulation pursuant to 5 CFR 3101.109(g). Specifically, the OTS Director waived 5 CFR 3101.109(c) to permit examiners, their spouses, and minor children to obtain credit cards subject to the statutory conditions. On March 31, 2006, the Director granted a blanket waiver to permit all covered employees, their spouses and minor children, to obtain loans from OTS-regulated thrifts if the loan is secured by the borrower's principal residence and meets certain other conditions. Covered employees are required to report any such loans and credit cards on their annual OTS supplemental financial disclosure reports and to attest that the card or loan was obtained and is being held on non-preferential terms.

[5] OTS will, however, continue to require covered OTS employees to disclose their credit cards on their annual OTS supplemental financial disclosure reports, and to attest that their credit cards meet the requirements of this rule.

not, however, prevent a covered OTS employee from participating in formulating OTS policy or writing guidance, policy statements or regulations generally applicable to savings associations or their subsidiaries.[6]

Currently, the rules disqualify an examiner only with respect to activities that affect the savings association or the savings association's subsidiaries. 5 CFR 3101.109(c)(3)(ii) (2006). The disqualification does not extend to the savings association's holding company or to the holding company's other subsidiaries. The final rule takes this same approach. OTS may, of course, require a covered OTS employee to submit a disqualification that also covers the holding company and its other subsidiaries. On a case-by-case basis, OTS may require a disqualification if the relevant facts and circumstances surrounding the examiner's participation in an examination, the review of an application, or any other supervisory or regulatory matter directly affecting the holding company and its other subsidiaries would cause a reasonable person to question the examiner's impartiality. *See* 5 CFR 2635.502.

B. Loans Secured by Principal Residence

The Department has also reviewed whether it should retain restrictions on loans secured by a principal residence. Typically, home loans, unlike credit card loans, are the subject of negotiation between borrowers and lenders. While such negotiations increase the opportunity for a real or perceived conflict of interest, the Department believes that such conflicts may be minimized by the imposition of appropriate conditions. The Department does not believe that this rule change will unduly interfere with OTS's ability to distribute work assignments among employees, since each covered OTS employee is unlikely to have more than one or two loans secured by a principal residence.

Accordingly, the Department has revised the rule in new amended paragraph (c)(3)(ii) of § 3101.109 to permit a covered OTS employee (or a spouse or minor child of a covered OTS employee) to obtain and hold loans from a savings association or subsidiary of a savings association, subject to several conditions. First, pursuant to new amended paragraph (c)(3)(ii)(A), the loan must be secured primarily by residential real property that is the borrower's principal residence. This final rule applies to any loan secured primarily by a principal residence including a new mortgage loan, a refinanced loan, and a home equity line of credit. The rule, however, applies only to loans secured primarily by the borrower's principal residence. It does not apply to loans secured by vacation homes, investment properties, or other dwellings. The rule permits the borrower to retain a loan that was permissible when it was made, even though the residential real property has ceased to be the borrower's principal residence. However, any subsequent renewal or renegotiation of the original terms of such a loan must meet the requirements of the prohibited borrowings rule.

Second, pursuant to amended paragraph (c)(3)(ii)(B), the borrower may not apply for the loan while the covered OTS employee participates, or is scheduled to participate, in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting the savings association or its subsidiaries. OTS believes that a reasonable person might question the employee's impartiality in such an instance.

Third, the final rule incorporates conditions designed to ensure compliance with 18 U.S.C. 212, as amended. Specifically, the rule provides at amended paragraph (c)(3)(ii)(C) that a borrower must satisfy all financial requirements for the loan that are generally applicable to all applicants for the same type of residential real property loan. Also, under amended paragraph (c)(3)(ii)(D), the terms and conditions applicable with respect to the loan and any credit extended to the borrower under the loan may be no more favorable generally to the borrower than the terms and conditions that are generally applicable to residential real property loans offered by the same savings association (or same subsidiary) to other borrowers in comparable circumstances for residential real property loans.

To permit OTS to monitor loans under the principal residence exception, the final rule requires covered employees to provide certain information to OTS. Specifically, pursuant to amended paragraph (c)(3)(ii)(E), a covered OTS employee must inform his or her OTS supervisor and the OTS ethics officer before the borrower applies for a residential real property loan under the principal residence exemption. Immediately after the borrower enters into the loan agreement, amended paragraph (c)(3)(ii)(F) provides that the covered employee must also: Notify his or her supervisor and the OTS ethics officer of the agreement; certify that the loan meets the requirements for the principal residence exception; and submit a written disqualification stating that he or she will not participate in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting the savings association or its subsidiaries.[7] Like the credit card disqualification, this disqualification will not prevent the covered OTS employee from participating in formulating OTS policy or writing guidance, policy statements or regulations generally applicable to savings associations; does not generally extend to the savings association's holding company (or other holding company affiliates); and may be waived on a case-by-case basis under 5 CFR 3101.109(g).

C. Pre-Existing and Transferred Loans

The current rules at 5 CFR 3101.109(c)(4) (2006) permit a covered OTS employee (or spouse or minor child of a covered OTS employee) to retain a loan on its original terms if (1) the loan was incurred before April 30, 1991 or before employment with the OTS, whichever date is later; or (2) the loan was acquired by sale or transfer to an OTS-regulated savings association or by conversion or merger of the lender into an OTS-regulated savings association. A renewal or renegotiation of such a pre-existing or transferred loan, however, must comply with loan restrictions in 5 CFR 3101.109(c)(1) and (c)(2) (2006) of the current Treasury Supplemental Ethics Regulations, prior to this final rule amendment.

The final rule makes a few changes to this provision. First, credit card accounts will not be eligible for the pre-existing or transferred loan exception in amended § 3101.109(c)(4). OTS expects all credit card accounts, including pre-existing credit card accounts, to satisfy the ''arms-length terms'' and other requirements described in the other exceptions under the final rule. The final rule also requires a covered OTS employee to provide the OTS ethics officer with a timely notification when the employee (or his or her spouse or minor child) holds a pre-existing or transferred loan under this section, and to submit a written disqualification stating that the employee will not participate in any examination, the review of any application, or any other

[6] The disqualification requirement may be waived on a case-by-case basis under the circumstances described at 5 CFR 3101.109(g).

[7] Covered OTS employees will also be required to disclose these loans on their annual OTS supplemental financial disclosure reports.

supervisory or regulatory matter directly affecting that savings association or its subsidiaries.

D. Loans from Holding Companies

Additionally, OTS has decided to prohibit an OTS examiner from examining a savings and loan holding company (or its subsidiaries), if the holding company (or its subsidiary) owns or holds the examiner's loan. This rule is not based on the criminal provisions at 18 U.S.C. 212 and 213, since these entities usually are not financial institutions. Rather, OTS believes that such arrangements would raise a question about an examiner's impartiality in the mind of a reasonable person with knowledge of the relevant facts and circumstances. *See* 5 CFR 2635.502.

Specifically, the final rule states at new paragraph (c)(5) of § 3101.109 that an OTS examiner must submit a written disqualification to OTS if the examiner (or his or her spouse or minor child) obtains or holds a loan from a savings and loan holding company or its subsidiary (other than a subsidiary that is an OTS-regulated savings association or its subsidiary). The written disqualification must state that the examiner will not participate in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting that lender.

However, the last sentence of new paragraph (c)(5) states that an examiner is not required to submit a disqualification for any loan that would have been permitted and would not have required a disqualification under the rules if a savings association had made the loan. For example, an OTS examiner would not be required to submit a disqualification for a credit card loan from a holding company if the examiner satisfies all financial requirements for the credit card account that are generally applicable to all applicants for the same kind of account, and the terms and conditions applicable to the account are no more favorable generally to the cardholder than the terms and conditions that are generally applicable to credit card accounts offered by the holding company. Of course, the examiner would be required to submit a written disqualification to OTS if he or she became involved in an adversarial dispute with the holding company that issued the credit card account.

E. Clarifications

In addition to the changes discussed above, the Department has made technical changes to the prohibition on borrowing by a spouse or minor child to conform the provisions addressing permissible terms and conditions to the related standard contained in the statute at 18 U.S.C. 212(c)(4)(A) and (B), as amended, and to use plain language in the final rule consistent with 12 U.S.C. 4809.

III. Regulatory Findings

A. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(a)(2), notice of proposed rulemaking, opportunity for public comment, and a 30-day delayed effective date are not applicable to this final rule amendment.

B. Regulatory Flexibility Act Analysis

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

C. Executive Order 12866

The Department has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

List of Subjects in 5 CFR Part 3101

Conflict of interests, Ethics, Extensions of credit, Government employees, OTS employees.

■ For the reasons set forth in the preamble, the Department, with the concurrence of OGE, amends 5 CFR part 3101 as follows:

PART 3101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF THE TREASURY

■ 1. The authority citation for part 3101 continues to read as follows:

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 212, 213; 26 U.S.C. 7214(b); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803, 2635.807(a)(2)(ii).

■ 2. In § 3101.109, revise paragraphs (c)(2), (c)(3), and (c)(4) and add a new paragraph (c)(5) to read as follows:

§ 3101.109 Additional rules for Office of Thrift Supervision employees.

* * * * *

(c) * * *

(2) *Prohibition on borrowing by a spouse or minor child.* The prohibition in paragraph (c)(1) of this section applies to the spouse and minor child of a covered OTS employee, except that a spouse or minor child may obtain and hold a loan or extension of credit from an OTS-regulated savings association (or its subsidiary) if:

(i) The loan or extension of credit is supported only by the income or independent means of the spouse or minor child;

(ii) The spouse or minor child satisfies all financial requirements for the loan or extension of credit that are generally applicable to all applicants for the same type of loan or extension of credit;

(iii) The terms and conditions applicable with respect to the loan or extension of credit and any credit extended to the borrower under the loan or extension of credit are no more favorable generally to the borrower than the terms and conditions that are generally applicable to loans or extensions of credit offered by the same savings association (or same subsidiary) to other borrowers in comparable circumstances for the same type of loan or extension of credit; and

(iv) The covered OTS employee does not participate in the negotiation for the loan or serve as a co-maker, endorser, or guarantor of the loan or extension of credit.

(3) *Exceptions*—(i) *Credit cards.* A covered OTS employee (or a spouse or minor child of a covered OTS employee) may obtain and hold a credit card account established under an open-end consumer credit plan and issued by an OTS-regulated savings association (or its subsidiary), subject to the following conditions:

(A) The cardholder must satisfy all financial requirements for the credit card account that are generally applicable to all applicants for the same type of credit card account;

(B) The terms and conditions applicable with respect to the account and any credit extended to the cardholder under the account are no more favorable generally to that cardholder than the terms and conditions that are generally applicable to credit card accounts offered by the same savings association (or the same subsidiary) to other cardholders in comparable circumstances under open-end consumer credit plans; and

(C) The covered OTS employee must submit a written disqualification to OTS if the cardholder becomes involved in an adversarial dispute with the issuer of the credit card account. The written disqualification must state that the covered OTS employee will not participate in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting the savings association or its subsidiaries. For the purposes of this paragraph (c)(3)(i), a cardholder is involved in an adversarial dispute if he or she is delinquent in payments on the

credit card account; the issuer and the cardholder are negotiating to restructure the credit card debt; the issuer garnishes the cardholder's wages; the cardholder disputes the terms and conditions of the account; or the cardholder becomes involved in any disagreement with the issuer that may cast doubt on the covered OTS employee's ability to remain impartial with respect to the savings association or its subsidiaries. Preliminary inquiries to the issuer regarding the accuracy of billing information or billed items are not, but may become, an adversarial dispute.

(ii) *Loans secured primarily by principal residence.* A covered OTS employee (or a spouse or minor child of a covered OTS employee) may obtain and hold a residential real property loan from an OTS-regulated savings association (or its subsidiary) subject to the following conditions:

(A) The loan must be secured primarily by residential real property that is the borrower's principal residence. The borrower may retain the loan if the residential real property ceases to be that borrower's principal residence. However, any subsequent renewal or renegotiation of the original terms of such a loan must meet the requirements of this paragraph (c)(3)(ii);

(B) The borrower may not apply for the loan while the covered OTS employee participates, or is scheduled to participate, in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting the savings association or its subsidiaries;

(C) The borrower must satisfy all financial requirements for the loan that are generally applicable to all applicants for the same type of residential real property loan;

(D) The terms and conditions applicable with respect to the loan and any credit extended to the borrower under the loan are no more favorable generally to that borrower than the terms and conditions that are generally applicable to residential real property loans offered by the same savings association (or same subsidiary) to other borrowers in comparable circumstances for residential real property loans;

(E) The covered OTS employee must inform his or her OTS supervisor and the OTS ethics officer before the borrower applies for a residential real property loan under this paragraph (c)(3)(ii); and

(F) Immediately after the borrower enters into the loan agreement, the covered OTS employee must:

(*1*) Notify his or her supervisor and the OTS ethics officer of the loan agreement;

(*2*) Certify that the loan meets the requirements of this paragraph (c)(3)(ii); and

(*3*) Submit a written disqualification stating that the covered OTS employee will not participate in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting the savings association or its subsidiaries.

(4) *Pre-existing loans.* (i) Other than a credit card account, which must comply with paragraph (c)(3)(i) of this section, a covered OTS employee (or spouse or minor child of a covered OTS employee) may retain a loan from an OTS-regulated savings association (or its subsidiary) on its original terms if:

(A) The loan was incurred before April 30, 1991 or the date that the individual became a covered OTS employee, whichever date is later; or

(B) The savings association (or its subsidiary) acquired the loan in a purchase or other transfer, or acquired the loan in a conversion or merger of the lender.

(ii) A covered OTS employee must notify the OTS ethics officer, in a timely manner, of any loan that meets the requirements of paragraph (c)(4)(i) of this section, and must submit a written disqualification stating that the covered OTS employee will not participate in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting the savings association or its subsidiaries.

(iii) If a covered OTS employee (or his or her spouse or minor child) renews or renegotiates the original terms of a pre-existing loan described in this paragraph (c)(4), the renewed or renegotiated loan will become subject to paragraphs (c)(1) through (c)(3) of this section.

(5) *Loans from holding companies.* An OTS examiner must submit to OTS a written disqualification if the OTS examiner (or a spouse or minor child of an OTS examiner) obtains or holds a loan from a savings and loan holding company or its subsidiary (other than a subsidiary that is an OTS-regulated savings association or its subsidiary, loans from which are covered by paragraph (c)(3) of this section). The written disqualification must state that the examiner will not participate in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting that lender. A disqualification is not required for a loan that would have been permitted and would not have required a disqualification under this paragraph (c), if a savings association (or its subsidiary) had made the loan.

* * * * *

Dated: July 9, 2007.

Robert F. Hoyt,

General Counsel, Department of the Treasury.

Approved: August 14, 2007.

Robert I. Cusick,

Director, Office of Government Ethics.

[FR Doc. E7–16711 Filed 8–22–07; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2007–0005]

Emerald Ash Borer; Additions to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the emerald ash borer regulations by designating the States of Illinois, Indiana, and Ohio, in their entirety, as quarantined areas. The interim rule was necessary to prevent the artificial spread of the emerald ash borer into noninfested areas of the United States. As a result of the interim rule, the interstate movement of regulated articles from those States is restricted.

DATES: Effective on August 23, 2007, we are adopting as a final rule the interim rule published at 72 FR 15597–15598 on April 2, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah McPartlan, National Emerald Ash Borer Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1236; (301) 734–5356.

SUPPLEMENTARY INFORMATION:

Background

The emerald ash borer (EAB) (*Agrilus planipennis*) is a destructive woodboring insect that attacks ash trees (*Fraxinus* spp., including green ash, white ash, black ash, and several horticultural varieties of ash). The insect, which is indigenous to Asia and known to occur in China, Korea, Japan, Mongolia, the Russian Far East, Taiwan, and Canada, eventually kills healthy ash trees after it bores beneath their bark and disrupts their vascular tissues.

The EAB regulations in 7 CFR 301.53–1 through 301.53–9 (referred to below as the regulations) restrict the interstate

movement of regulated articles from quarantined areas to prevent the artificial spread of EAB into noninfested areas of the United States. The regulations in § 301.53–3(a) provide that the Administrator of the Animal and Plant Health Inspection Service will list as a quarantined area each State, or each portion of a State, where EAB has been found by an inspector, where the Administrator has reason to believe that EAB is present, or where the Administrator considers regulation necessary because of its inseparability for quarantine enforcement purposes from localities where EAB has been found.

In an interim rule [1] effective and published in the **Federal Register** on April 2, 2007 (72 FR 15597–15598, Docket No. 2007–0005), we amended the regulations in § 301.53–3(c) by designating the States of Illinois, Indiana and Ohio, in their entirety, as quarantined areas. Comments on the interim rule were required to be received on or before June 1, 2007. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act. Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the EAB regulations by designating the States of Illinois, Indiana, and Ohio, in their entirety, as quarantined areas. The interim rule was necessary to prevent the artificial spread of the emerald ash borer into noninfested areas of the United States. As a result of the interim rule, the interstate movement of regulated articles from those States is restricted.

The following analysis addresses the economic effects of the interim rule on small entities, as required by the Regulatory Flexibility Act.

Based on data from the 2002 Census of Agriculture, there were 4,909 nurseries and 285 sawmills in Illinois, Indiana, and Ohio in that year. The interim rule will not have negatively affected entities in areas of the three States that were already under quarantine. Those entities may, in fact, benefit by not having to have regulated articles certified prior to movement within the State, as had been the case when only a portion of each State was quarantined. We do not know the number of these entities. For the newly quarantined entities in the three States, the extent to which they will be affected by the interim rule will depend on the importance of ash species to their businesses and the share of ash species sales that are interstate.

In Indiana, the interim rule may affect as many as 1,123 nurseries, 114 sawmills, and an unknown number of firewood dealers, ash lumber producers, and woodlot owners, based on 2002 data. In Ohio, there are at least 2,678 nurseries and 121 sawmills that may be affected by the EAB quarantine. There are also at least 60 ash lumber operations, 18 firewood dealers, and an unknown number of woodlot owners and landscapers.[2] In Illinois, the interim rule may affect at least 1,108 nursery operations and 50 sawmills. However, the rule only affects the proportion of nursery stock in these operations that is deciduous shade trees of an ash species.

The U.S. Census of Agriculture does not report sale receipts nor the number of employees by entity. It is reasonable to assume that most are small in size according to the U.S. Small Business Administration's standards. The small business size standard based upon the North American Industry Classification System (NAICS) code 111421 (nursery and tree production) is $750,000 or less in annual receipts. The small business size standard based upon NAICS code 113210 (forest nursery and gathering of forest products) is $6 million or less in annual receipts. The small business size standard based upon NAICS codes 113310 (logging operations) and 321113 (sawmills) is 500 or fewer persons employed by the operation.[3] It is estimated that more than 90 percent of nursery operations located in these States are small operations with annual receipts of less than $750,000 (including nursery operations that sell deciduous shade trees).[4] It is reasonable to assume that nearly all sawmills and logging operations have 500 or fewer employees, since more than 80 percent of the sawmills located in these States have fewer than 20 employees and each State has an average of 14–15 employees per operation.[5] The percentage of annual revenue attributable to ash species alone for affected entities is unknown.

Under the regulations, regulated articles may be moved interstate from a quarantined area into or through an area that is not quarantined only if they are accompanied by a certificate or limited permit. An inspector or a person operating under a compliance agreement will issue a certificate for interstate movement of a regulated article if certain conditions are met, including that the regulated article is determined to be apparently free of EAB.

Businesses could be affected by the regulations in two ways. First, if a business wishes to move regulated articles interstate from a quarantined area, that business must either: (1) Enter into a compliance agreement with APHIS for the inspection and certification of regulated articles to be moved interstate from the quarantined area; or (2) present its regulated articles for inspection by an inspector and obtain a certificate or a limited permit, issued by the inspector, for the interstate movement of regulated articles. The inspections may be inconvenient, but they should not be costly in most cases, even for businesses operating under a compliance agreement that would perform the inspections themselves. For those businesses that elect not to enter into a compliance agreement, APHIS would provide the services of the inspector without cost during normal business hours. There is also no cost for the compliance agreement, certificate, or limited permit for the interstate movement of regulated articles.

Second, there is a possibility that, upon inspection, a regulated article could be determined by the inspector to be potentially infested with EAB, and, as a result, the article would be ineligible for interstate movement under a certificate. In such a case, the entity's ability to move regulated articles interstate would be restricted. However, the affected entity could conceivably obtain a limited permit under the conditions of § 301.53–5(b).

Our experience with administering the EAB regulations and the regulations for other pests, such as the Asian longhorned beetle, that impose essentially the same conditions on the interstate movement of regulated articles leads us to believe that any economic effects on affected small

[1] To view the interim rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2007–0005.*

[2] Tom Harrison, Ohio Department of Agriculture, personal communication.

[3] Based upon 2002 Census of Agriculture—State Data and the ''Small Business Size Standards by NAICS Industry.'' Code of Federal Regulations, Title 13, Chapter 1.

[4] ''Nursery Crops: 2002 Summary.'' National Agricultural Statistics Service, USDA July 2004.

[5] ''2002 Economic Census: Manufacturing.'' U.S. Census Bureau, July 2005 (Indiana, Illinois, and Ohio Geographical reports).

entities will be small and are outweighed by the benefits associated with preventing the spread of EAB into noninfested areas of the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 72 FR 15597–15598 on April 2, 2007.

Done in Washington, DC, this 15th day of August 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service

[FR Doc. E7–16695 Filed 8–22–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC12

Common Crop Insurance Regulations; Millet Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations; Millet Crop Insurance Provisions to remove the reduction in indemnity for any unharvested millet acreage to better meet the needs of insured producers.

DATES: *Effective Date:* September 24, 2007.

FOR FURTHER INFORMATION CONTACT: Erin Albright, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility—Mail Stop 0812, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is non significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through November 30, 2007.

Government Paperwork Elimination Act (GPEA) Compliance

FCIC is committed to compliance with the GPEA, which requires Government agencies, in general, to provide the public with the option of submitting information or transacting business electronically to the maximum extent possible. FCIC requires that all reinsured companies be in compliance with the Freedom to E-File Act and section 508 of the Rehabilitation Act.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Written agreement requirements for the Federal crop insurance program are the same for all producers regardless of the size of their operations. For instance, all producers requesting this type of written agreement must submit production history for at least the most recent three crop years in which the crop was planted during the base period, if they produced the crop for three years. If any producer has not produced the crop for three years, he or she may submit evidence of production history for a similar crop, or for a combination of production history for the crop and a similar crop, provided a total of three years of production history is provided. Whether a producer has 10 acres or 100 acres there is no difference in the kind of information required for requesting a written agreement. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this change helps ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an

Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule finalizes proposed changes made to 7 CFR 457.165 (Millet Crop Insurance Provisions) that were published by FCIC on December 27, 2006, as a notice of proposed rulemaking in the **Federal Register** at 71 FR 77628–77629.

The public was afforded 60 days to submit written comments and opinions. A total of 27 comments were received from three commenters. The commenters were an insurance service organization and two approved insurance providers. The comments received and FCIC's responses are as follows:

Comment: A commenter stated they were in agreement with the Proposed Rule published by the Federal Crop Insurance Corporation that amends the Millet Crop Provisions.

Response: FCIC thanks the commenter for their assistance in reviewing the Millet Proposed Rule.

Comment: A few commenters agreed with the statement in the Background portion of the Proposed Rule that the proposed change will require a corresponding premium rate increase. One commenter stated the amount of this increase should correspond to the amount of the additional loss payments that will result.

Response: As stated in the Background of the proposed rule, premium rates will be increased because the amount of indemnity paid may increase and the premium will be determined based on the anticipated losses for the revised policy and a reasonable reserve in accordance with section 508(d) of the Federal Crop Insurance Act.

Comment: A few commenters stated the preamble of the current Crop Provisions indicates which policy provisions take preference if a conflict exists among policy provisions. This has been removed from the Crop Provisions that have recently been published in the **Federal Register** as this is covered in the Basic Provisions. There was no indication in the proposed rule if this will remain unchanged or will be removed. The commenters recommended that it be removed.

Response: FCIC has removed the provisions regarding document priority because these provisions are now contained in the Basic Provisions.

Comment: A few commenters recommended FCIC consider deleting the repetitive phrases in the definition of ''late planting period.'' The commenters recommended deleting the phrases ''of 'Late planting period' contained'' and ''late planting period is defined as'' from the definition.

Response: FCIC has modified the definition accordingly.

Comment: A few commenters recommended FCIC consider either deleting the comma after ''including'' or adding a matching comma after the subsequent phrase [''including, but not limited to * * *''] in the definition of ''local market price.''

Response: FCIC has modified the definition accordingly.

Comment: A few commenters recommended FCIC consider deleting the repetitive phrases in the definition of ''planted acreage.'' The commenters recommended deleting the phrases ''of 'Planted acreage' contained'' and ''not contained in the definition of 'planted acreage' '' from the definition.

Response: FCIC has modified the definition accordingly.

Comment: A few commenters stated references to ''windrow[ing]'' have been removed in this Proposed Rule in section 7(a) & (b) except for in the definitions of ''swathed'' and ''windrow.'' The commenters asked FCIC to consider deleting the definition of ''windrow'' and revising the definition of ''swathed'' to refer to ''* * * and placing into a row.''

Response: FCIC has removed the definition of windrow and revised the definition of ''swathed'' accordingly.

Comment: A few commenters stated in section 7 it is unclear if the deletion of ''the'' in ''* * * end of insurance period * * *'' is intentional (it is kept in the references in the Background portion of the Proposed Rule).

Response: FCIC did not intentionally delete the word ''the'' in the phrase ''* * * end of insurance period * * *'' FCIC has revised the provision in section 7 to state ''* * * end of the insurance period * * *''

Comment: A few commenters stated the explanation in the Background portion of the Proposed Rule indicates the date changes for the end of the insurance period in sections 7(a) and (b) are due to the elimination of separate dates depending on whether or not the acreage was swathed and windrowed but does not provide any reason why the proposed dates are often two weeks to a month later than the earlier of the current dates. The commenters asked if they can assume the loss history supports these later dates. One commenter asked why the proposed dates were changed for Wyoming (''WY'') and ''all other states.''

	2003 crop provisions	Proposed rule
ND, SD ...	Sept. 15 or Oct. 10	Oct. 10.
WY	Sept. 30 or Oct. 15	Oct. 10.
All other states.	Sept. 30 or Oct. 15	Oct. 31.

Response: Only one date, rather than dual dates, is necessary for the end of the insurance period for each group of states because of the removal of the provision that reduced the indemnity of the acreage that was not swathed or harvested. The Risk Management Agency Regional Offices reviewed the end of the insurance period dates and recommended the proposed changes to the end of insurance period dates to more accurately reflect actual harvesting dates for millet.

Comment: A few commenters recommended the insured cause of loss in section 8(b) be clarified as ''Fire, due to natural causes'' (or ''Fire, if caused by lightning'', as in the proposed revision to the Tobacco Crop Provisions).

Response: This change is not necessary because the Act requires all causes of loss to be natural causes, not just fire. Specifically referring to natural disasters with respect to fire but not the other causes of loss could create the impression that other such causes could be something other than from natural causes. Further, section 12 of the Basic Provisions specifically refers to ''unavoidable'' causes of loss due to ''naturally occurring events''. No change has been made.

Comment: A few commenters recommended adding hyphens in ''1,500-bushel guarantee'' and ''800-bushel production to count'' in steps (1) & (2) of the Example in section 10.

Response: The recommended change does not clarify the provision and such change would be inconsistent with other applicable Crop Provisions where no hyphen is used between the applicable number and the term ''bushel.'' No change has been made.

Comment: A few commenters stated in section 10(d)(4)(iv) it appears the parenthetical phrase should refer to plural ''* * * (the moisture-adjusted gross bushels, if appropriate) * * *''

Response: FCIC has revised section 10(d)(4)(iv) accordingly.

Comment: A few commenters stated they are in agreement with the proposal to eliminate section 10(f) provided the premium rates are increased accordingly to account for the increased losses that will result.

Response: As stated above, premium rates will be based on the anticipated losses under the revised Millet Crop Provisions.

Comment: A few commenters recommended eliminating the option to increase prevented planting coverage levels (in the second sentence) of section 12, as well as reviewing the amount that is being paid for prevented planting purposes.

Response: FCIC cannot incorporate the commenters' recommendations of eliminating the option to increase prevented planting coverage levels in the final rule since the recommended change was not proposed, the recommended change is substantive in nature, and the public was not provided an opportunity to comment on the recommended change.

List of Subjects in 7 CFR Part 457

Crop insurance, Millet, Reporting and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 the Common Crop Insurance Regulations, for the 2008 and succeeding crop years, as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

■ 2. In § 457.165 make the following amendments:

■ a. Revise the introductory text.

■ b. Remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict.

■ c. Amend section 1 of § 457.165 by removing the definition of ''windrow;'' revising the definitions of ''late planting period'' and ''planted acreage;'' amending the definition of ''local market price'' by adding a comma after the phrase ''but not limited to;'' and amending the definition of ''swathed'' by removing the term ''windrow'' and adding the term ''row'' in its place.

■ d. Revise section 7 of § 457.165.

■ e. Revise section 8(h) of § 457.165.

■ f. Amend section 10(b)(4) of § 457.165 by removing the phrase ''and any adjustment from section 10(f).''

■ g. Amend paragraph (2) of the example in section 10(b) of § 457.165 by removing the phrases ''1,500 bushels'' and adding the phrase ''1,500 bushel'' in its place.

■ h. Amend paragraph (3) of the example in section 10(b) of § 457.165 by removing the phrase ''700 bushel'' and adding the phrase ''700 bushels'' in its place.

■ i. Amend section 10(d)(4)(iii) of § 457.165 by removing the semicolon at the end of the current text and adding a period in its place.

■ j. Amend section 10(d)(4)(iv) by removing the phrase ''gross bushel'' and adding the phrase ''gross bushels'' in its place.

■ k. Remove section 10(f) of § 457.165.

■ l. Amend section 11(a) of § 457.165 by adding the phrase ''per day'' after the phrase ''One percent''.

■ m. Amend section 11(b) of § 457.165 by adding the phrase ''per day'' after the phrase ''Three percent''.

■ n. Amend section 12 of § 457.165 by removing the phrase ''an additional coverage level'' and adding the phrase ''additional levels of coverage'' in its place.

The revised text reads as follows:

§ 457.165 Millet crop insurance provisions.

The millet crop insurance provisions for the 2008 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Late planting period. In lieu of the definition contained in the Basic Provisions, the period that begins the day after the final planting date for the insured crop and ends 20 days after the final planting date.

* * * * *

Planted acreage. In addition to the definition contained in the Basic Provisions, land on which seed is initially spread onto the soil surface by any method and is subsequently mechanically incorporated into the soil in a timely manner and at the proper depth. Acreage planted in any manner not contained in this definition will not be insurable unless otherwise provided by the Special Provisions.

* * * * *

7. Insurance Period.

In accordance with section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting (unless otherwise specified in the Special Provisions) as follows:

(a) October 10 for North Dakota, South Dakota, and Wyoming; and

(b) October 31 for all other states.

8. Causes of Loss.

* * * * *

(h) Failure of the irrigation water supply due to a cause of loss specified in sections 8(a) through (g) that also occurs during the insurance period.

* * * * *

Signed in Washington, DC, on August 9, 2007.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E7–15954 Filed 8–22–07; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560–AH73

Milk Income Loss Contract Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the regulations for the Milk Income Loss Contract (MILC) Program as authorized by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, to extend the payment calculation at 34 percent for the month of September 2007.

DATES: *Effective Date:* August 22, 2007.

FOR FURTHER INFORMATION CONTACT: Danielle Cooke, Special Programs Manager, Price Support Division, FSA/USDA, STOP 0512, 1400 Independence Ave., SW., Washington, DC 20250–0512; telephone (202) 720–1919; facsimile (202) 690–1536; e-mail: *Danielle.Cooke@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

The Milk Income Loss Contract (MILC) Program is administered by the Commodity Credit Corporation (CCC). The MILC Program compensates dairy producers when domestic milk prices fall below a specified level. In general, eligible dairy producers are those who commercially produce and market cow milk in the United States or produce milk in the United States and commercially market the milk outside the United States.

The program began on December 1, 2001 and was extended to September 30, 2007. In 2006, applicable to the program extension, the signup and contract periods were both set to end on September 30, 2007. The 2006 amendment lowered the payment calculation percentage from 45 to 34; however, it only extended the payment

calculation of 34 percent through August 31, 2007. It further specified that beginning on September 1, 2007, the payment calculation would be zero percent (0%).

Recently, section 9006 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (2007 Emergency Supplemental) amended the authority for the MILC Program to extend the current payment calculation percentage of 34 percent to September 30, 2007.

The MILC Program supports the dairy industry by providing direct counter-cyclical payments to milk producers when the Boston Milk Marketing Order Class I price for fluid milk falls below $16.94 per hundredweight (cwt). Each fiscal year, eligible dairy operations can receive a monthly payment based on the quantity of milk sold in that month, up to a maximum of 2.4 million pounds per dairy operation for the fiscal year. We determine the per hundredweight payment rate for the applicable month by subtracting the Boston Class I price for that month from the $16.94 baseline, and multiplying the difference by 34 percent. For example:

- Boston Class I price announced in February 2006 = $16.63.
- $16.94 − $16.63 = $0.31.
- $0.31 × 34 percent = $0.1054000.
- Therefore, the payment rate for February 2006 was $0.1054 per hundredweight.

This rule amends 7 CFR part 1430 to increase the payment rate percentage during the month of September 2007. This makes the calculation percentage consistent for all months in fiscal years 2006 and 2007.

MILC payments are based on the commercially-marketed milk production from the MILC production start month selected by the dairy operation, and continue with each subsequent month's commercial milk production until the earlier of the following: the dairy operation reaches the maximum payment quantity of 2.4 million pounds or the applicable fiscal year ends.

If there is a payment rate in effect during the month of September 2007 and the dairy operation has received MILC payments on less than 2.4 million pounds of production for the 2007 fiscal year, payments will continue through September 2007. The dairy operation can change its production start month selection, with some limitations, to September 2007, as specified in 7 CFR 1430.205, Selection of Starting Month. New MILC producers entering into a MILC will be allowed to select, with some limitations, September 2007 as the production start month for their dairy operation. Those selections must be made in advance of the announcement of the Boston Class I milk price and establishment of the MILC payment rate for that month. Dairy operations that have exceeded their 2.4 million pound production limitation for the 2007 fiscal year will not receive a MILC payment for September 2007.

Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), also referred to as the 2002 Farm Bill, requires that the regulations necessary to implement Title I of the 2002 Act, including the MILC Program, are to be promulgated and administered without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. This regulatory change of the MILC Program is therefore issued as final.

Executive Order 12866

This final rule is not significant according to Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because CCC is not required to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Review

In accordance with the National Environmental Policy Act (42 U.S.C. 4321–4347) and the regulations in 40 CFR 1502.4 (Major Federal actions requiring the preparation of Environmental Impact Statements), 7 CFR part 799 (Environmental Quality and Related Environmental Concerns—Compliance with NEPA implementing the regulations of the Council on Environmental Quality), and 40 CFR parts 1500–1508, FSA has determined that this final rule will have no significant impacts upon the human environment. Therefore no environmental assessment or environmental impact statement will be prepared.

Executive Order 12988

The final rule has been reviewed under Executive Order 12988. This rule preempts State laws that are inconsistent with its provisions. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required to publish a notice of proposed rulemaking about the subject matter of this rule. Further, this rule imposes no unfunded mandates, as define in UMRA, on any local, state, or tribal government or the private sector.

Paperwork Reduction Act

Section 1601(c) of the 2002 Farm Bill provides that the promulgation of regulations and the administration of Title I of the 2002 Farm Bill, including the MILC Program, be made without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations, the forms, and other information collection activities needed to administer the program authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Federal Assistance Programs

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this final rule applies is 10.051—Commodity Loans and Loan Deficiency Payments.

List of Subjects in 7 CFR Part 1430

Dairy products, Fraud, Loan programs—agriculture, Penalties, Price support programs, Reporting and recordkeeping requirements.

■ For the reasons explained above, 7 CFR part 1430 is amended as set forth below.

PART 1430—DAIRY PRODUCTS

■ 1. Revise the authority citation for part 1430 to read as follows:

Authority: 7 U.S.C. 7981 and 7982; 15 U.S.C. 714b and 714c; Pub. L. 108–324, 118

Stat. 1235; 16 U.S.C. 3801 note (Pub. L. 109–234, 120 Stat. 474); and Pub. L. 110–28, section 9006.

Subpart B—Milk Income Loss Contract Program

§ 1430.208 [Amended]

■ 2. Amend § 1430.208 as follows:
■ a. In paragraph (b)(2), remove the words ''August 31'' and add, in their place, the words ''September 30''; remove the words ''; and'' and add in their place a period; and
■ b. Remove paragraph (b)(3).

Signed in Washington, DC, on August 9, 2007.

Glen L. Keppy,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E7–16713 Filed 8–22–07; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27374; Airspace Docket No. 07–ANM–2]

Establishment of Class E Airspace; Everett, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E surface airspace at Everett, WA. Controlled airspace is necessary to accommodate aircraft executing Special Visual Flight Rules (SVFR) operations at Everett, Snohomish County Airport (Paine Field), Everett, WA. This will improve the safety of SVFR aircraft at the Everett, Snohomish County Airport. Additionally this action also corrects the geographic location of Everett, Snohomish County Airport.

DATES: *Effective Date:* 0901 UTC, October 25, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Western Service Area Office, System Support Group, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 917–6726.

SUPPLEMENTARY INFORMATION:

History

On June 1, 2007, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace at Everett, WA, (72 FR 30500). This action would improve the safety of SVFR aircraft at Everett, Snohomish County Airport (Paine Field), Everett, WA. 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 6005 of FAA Order 7400.9P dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR part 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 establishing Class E airspace at Everett, WA. Additional controlled airspace is necessary to accommodate SVFR aircraft at Everett, Snohomish County Airport (Paine Field), Everett, WA.

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 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006 is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ANM WA E2 Everett, WA [New]

Everett, Snohomish County Airport (Paine Field), WA
(Lat. 47°54′23″ N., long. 122°16′53″ W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.5-mile radius of the Snohomish County Airport. This Class E airspace is effective when the tower is not in operation. The effective date and time will be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on August 2, 2007.

Clark Desing,

Manager, System Support Group, Western Service Center.

[FR Doc. E7–16403 Filed 8–22–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25788; Airspace Docket No. 06–ANM–9]

Revision of Class E Airspace; Hoquiam, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will revise Class E airspace at Hoquiam, WA. Controlled airspace is necessary to accommodate aircraft using the Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Bowerman Airport. This will improve the safety of Instrument Flight Rules (IFR) aircraft at the Bowerman Airport, Hoquiam, WA.

DATES: *Effective Date:* 0901 UTC, October 25, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Western Service Area

Office, System Support Group, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 917–6726.

SUPPLEMENTARY INFORMATION:

History

On June 1, 2007, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace at Hoquiam, WA, (72 FR 30499). This action would improve the safety of IFR aircraft at Bowerman Airport, Hoquiam, WA. 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 6005 of FAA Order 7400.9P dated September 1, 2006, and 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 establishing Class E airspace at Hoquiam, WA. Additional controlled airspace is necessary to accommodate IFR aircraft at Bowerman Airport, Hoquiam, WA.

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 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006 is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ANM WA, E5 Hoquiam, WA [Revised]

Bowerman Airport, WA
(Lat. 46°58′16″ N., long. 123°56′12″ W.)
Hoquiam VORTAC
(Lat. 46°56′49″ N., long. 124°08′57″ W.)

That airspace extending upward from 700 feet above the surface within a 4.0-mile radius of Bowerman Airport and within a 13-mile radius arc of the airport bounded on the north by a line 1.8 miles north of and parallel to the Hoquiam VORTAC 068° radial and on the south by a line 3 miles south of and parallel to the Hoquiam VORTAC 088° radial; that airspace extending upward from 1,200 feet above the surface beginning lat. 47°20′00″ N., long. 124 ° 40′00″ W.; thence to lat. 47°20′00″ N., long. 123°30′00″ W.; thence to lat. 46°30′00″ N., long. 123°30′00″ W.; thence to lat. 46°30′00″ N., long. 124°30′00″ W.; thence to lat. 47°00′00″ N., long. 124°39′00″ W.; thence to point of beginning.

* * * * *

Issued in Seattle, Washington, on August 2, 2007.

Clark Desing,

Manager, System Support Group, Western Service Center.

[FR Doc. E7–16490 Filed 8–22–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28022; Airspace Docket No. 07–ASO–7]

Establishment of Class E Airspace; Centreville, AL; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final rule (FAA–2007–28022; 07–ASO–7), which was published in the **Federal Register** of July 11, 2007, (72 FR 37629), establishing Class E airspace at Centreville, AL. This action corrects an error in the legal description.

DATES: *Effective Date:* Effective 0901 UTC, October 25, 2007. The Director of the **Federal Register** approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Background

Federal Register Document 07–3345, Docket No. FAA–2007–28022; 07–ASO–7, published on July 11, 2007, (72 FR 37629), establishes Class E5 airspace at Centreville, AL. The geographical coordinates for the airport have changed since the document was published. In the legal description for the Class E5 airspace, the geographical coordinates, lat. 32°56′12″ N, long. 87°05′20″ W, have changed to lat. 32°56′13″ N, long. 87°05′26″ W. This action corrects this error. Designations for Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth are published in FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Need for Correction

As published, the final rule contains an error in the legal description of the Class E5 airspace area. Accordingly, pursuant to the authority delegated to me, the legal description for the Class E5 airspace area at Centreville, AL, incorporated by reference at § 71.1, 14 CFR 71.1, and published in the **Federal Register** on July 11, 2007, (72 FR 37629), is corrected by making the following correcting amendment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

■ In consideration of the foregoing, the Federal Aviation Administration corrects the adopted amendment, 14

CFR part 71, by making the following correcting amendment:

PART 71—[AMENDED]

■ 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 [Corrected]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and 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.

* * * * *

ASO AL E5 Centreville, AL [New]

Bibb County Airport, AL
(Lat. 32°56′13″ N, long. 87°05′26″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Bibb County Airport.

* * * * *

■ On page 37629, column 3, line 3 of the legal description, correct the geographical coordinates from ''lat. 32°56′12″ N, long. 87°05′20″ W'' to ''lat. 32°56′13″ N, long. 87°05′26″ W''.

* * * * *

Issued in College Park, Georgia, on June 26, 2007.

Barry A. Knight,

Acting Manager, System Support Group.

[FR Doc. 07–4108 Filed 8–22–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30566; Amdt. No. 3232]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes in the National Airspace System, such as the commissioning of new navigational facilities, adding of new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 23, 2007. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2007.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. It, therefore—(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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on August 10, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 and 97.37 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, LDA w/GS, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, MLS, TLS, GLS, WAAS PA, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; § 97.35 COPTER SIAPs, § 97.37 Takeoff Minima and Obstacle Departure Procedures. Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
07/27/07	NM	Albuquerque	Albuquerque Intl Sunport	7/0201	ILS or LOC RWY 3, Amdt 2.
07/27/07	DC	Washington	Ronald Reagan Washington National	7/0249	Takeoff Mins and (Obstacle) DP, Amdt 5.
07/27/07	MD	Elkton	Cecil County	7/0250	Takeoff Mins and (Obstacle) DP, Orig.
07/27/07	MA	Beverly	Beverly Muni	7/0251	Takeoff Mins and (Obstacle) DP, Amdt 2.
07/27/07	PA	Johnstown	John Murtha/Johnstown—Cambria County	7/0252	Takeoff Mins and (Obstacle) DP, Amdt 3.
07/27/07	CT	Willimantic	Windham	7/0254	Takeoff Mins and (Obstacle) DP, Amdt 3.
07/27/07	PA	Harrisburg	Harrisburg Intl	7/0253	Takeoff Mins and (Obstacle) DP, Amdt 6.
08/02/07	CA	Hawthorne	Jack Northrop Field/Hawthorne Muni	7/0851	Takeoff Mins and (Obstacle) DP, Amdt 3.
07/20/07	AK	McGrath	McGrath	7/9340	Takeoff Mins and (Obstacle) DP, Amdt 2.
07/23/07	AK	Anchorage	Merrill Field	7/9597	Takeoff Mins and (Obstacle) DP, Amdt 1.
07/27/07	GA	Monroe	Monroe—Walton County	7/0255	Takeoff Mins and (Obstacle) DP, Orig.
08/07/07	WA	Puyallup	Pierce County—Thun Field	7/1688	GPS Rwy 34, Orig-A.

[FR Doc. E7–16410 Filed 8–22–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30565; Amdt. No. 3231]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 23, 2007. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2007.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry. J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal

Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the SIAPs, the associated Takeoff Minimums,and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure before adopting these SIAPs, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. It, therefore—(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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC on August 10, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 30 AUG 2007*

Liberal, KS, Liberal Mid-America Rgnl, ILS OR LOC RWY 35, Amdt 4
Liberal, KS, Liberal Mid-America Rgnl, RNAV (GPS) RWY 4, Orig
Liberal, KS, Liberal Mid-America Rgnl, RNAV (GPS) RWY 17, Orig
Liberal, KS, Liberal Mid-America Rgnl, RNAV (GPS) RWY 22, Orig
Liberal, KS, Liberal Mid-America Rgnl, RNAV (GPS) RWY 35, Orig
Liberal, KS, Liberal Mid-America Rgnl, VOR/DME RWY 17, Amdt 4
Liberal, KS, Liberal Mid-America Rgnl, VOR RWY 4, Amdt 3
Liberal, KS, Liberal Mid-America Rgnl, VOR RWY 35, Amdt 12
Liberal, KS, Liberal Mid-America Rgnl, NDB RWY 35, Amdt 3A, CANCELLED
Liberal, KS, Liberal Mid-America Rgnl, Takeoff Minimums and Obstacle DP, Amdt 5

** * * Effective 27 SEP 2007*

Alabaster, AL, Shelby County, Takeoff Minimums and Obstacle DP, Amdt 2
Prattville, AL, Prattville-Grouby Field, VOR/DME–A, Amdt 3
Fresno-Chandler, CA, Fresno-Chandler Executive, Takeoff Minimums and Obstacle DP, Amdt 1
Long Beach, CA, Long Beach/Daugherty Field, RNAV (RNP) RWY 25R, Orig
Falmouth, KY, Gene Snyder, Takeoff Minimums and Obstacle DP, Orig
Old Town, ME, Dewitt Field, Old Town Municipal Airport, Takeoff Minimums and Obstacle DP, Orig
Stevensville, MD, Bay Bridge, Takeoff Minimums and Obstacle DP, Orig
Toms River, NJ, Robert J. Miller Air Park, Takeoff Minimums and Obstacle DP, Orig
Schenectady, NY, Schenectady County, NDB RWY 28, Amdt 10B, CANCELLED
Bradford, PA, Bradford Rgnl, Takeoff Minimums and Obstacle DP, Orig
Charleston, SC, Charleston Executive, RNAV (GPS) RWY 9, Orig-A
Spartanburg, SC, Spartanburg Downtown Memorial, VOR–B, Amdt 2B, CANCELLED
Brookneal, VA, Brookneal/Campbell County, Takeoff Minimums and Obstacle DP, Orig
Chase City, VA, Chase City Muni, Takeoff Minimums and Obstacle DP, Orig

** * * Effective 25 OCT 2007*

Birmingham, AL, Birmingham Intl, RNAV (GPS) RWY 24, Amdt 1
Russellville, AL, Russellville Muni, RNAV (GPS) RWY 2, Orig
Russellville, AL, Russellville Muni, RNAV (GPS) RWY 20, Orig
Russellville, AL, Russellville Muni, Takeoff Minimums and Obstacle DP, Orig
Selma, AL, Craig Field, ILS OR LOC RWY 33, Amdt 1
Selma, AL, Craig Field, RNAV (GPS) RWY 15, Orig
Selma, AL, Craig Field, RNAV (GPS) RWY 33, Orig
Selma, AL, Craig Field, NDB RWY 33, Amdt 4
Selma, AL, Craig Field, VOR RWY 15, Amdt 1
Selma, AL, Craig Field, Takeoff Minimums and Obstacle DP, Amdt 2
Chevak, AK, Chevak, RNAV (GPS) RWY 2, Orig
Chevak, AK, Chevak, RNAV (GPS) RWY 20, Orig
Chevak, AK, Chevak, RNAV (GPS) RWY 14, Orig-A, CANCELLED

Chevak, AK, Chevak, RNAV (GPS) RWY 32, Orig-A, CANCELLED
Chevak, AK, Chevak, Takeoff Minimums and Obstacle Departure Procedures, Orig
Okeechobee, FL, Okeechobee County, RNAV (GPS) RWY 5, Orig
Okeechobee, FL, Okeechobee County, RNAV (GPS) RWY 23, Orig
Okeechobee, FL, Okeechobee County, Takeoff Minimums and Obstacle Departure Procedures, Orig
Americus, GA, Souther Field, Takeoff Minimums and Obstacle Departure Procedures, Orig
Russell, KS, Russell Muni, RNAV (GPS) RWY 17, Orig
Russell, KS, Russell Muni, RNAV (GPS) RWY 35, Orig
Russell, KS, Russell Muni, VOR/DME–A, Amdt 5
Russell, KS, Russell Muni, GPS RWY 17, Orig, CANCELLED
Russell, KS, Russell Muni, GPS RWY 35, Orig, CANCELLED
Russell, KS, Russell Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Crookston, MN, Crookston Muni/Kirkwood FLD, RNAV (GPS) RWY 13, Orig
Crookston, MN, Crookston Muni/Kirkwood FLD, RNAV (GPS) RWY 31, Orig
Crookston, MN, Crookston Muni/Kirkwood FLD, NDB RWY 13, Amdt 8
Crookston, MN, Crookston Muni/Kirkwood FLD, GPS RWY 31, Amdt 1, CANCELLED
Crookston, MN, Crookston Muni/Kirkwood FLD, Takeoff Minimums and Obstacle DP, Amdt 2
New Albany, MS, New Albany-Union Co, RNAV (GPS) RWY 18, Orig
New Albany, MS, New Albany-Union Co, RNAV (GPS) RWY 36, Orig
New Albany, MS, New Albany-Union Co, Takeoff Minimums and Obstacle Departure Procedures, Orig
Newberry, SC, Newberry County, NDB RWY 22, Amdt 5
Newberry, SC, Newberry County, Takeoff Minimums and Obstacle Departure Procedures, Orig

[FR Doc. E7–16409 Filed 8–22–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 48 and 602

[TD 9346]

RIN 1545–BC08

Entry of Taxable Fuel; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (TD 9346) that were published in the **Federal Register** on Friday, July 27, 2007 (72 FR 41222) relating to the tax on the entry of taxable fuel into the United States.

DATES: The correction is effective August 23, 2007.

FOR FURTHER INFORMATION CONTACT: Celia Gabrysh at (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 4081 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9346) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9346), which was the subject of FR Doc. E7–14491, is corrected as follows:

On page 41222, column 3, in the preamble, under the paragraph heading ''Background'', the last line of the last paragraph of the column, the language ''nonsubstantive, clerical changes need to'' is corrected to read ''nonsubstantive, clerical changes needed to''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–16626 Filed 8–22–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9344]

RIN 1545–BG24

Change to Office to Which Notices of Nonjudicial Sale and Requests for Return of Wrongfully Levied Property Must Be Sent; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final and temporary regulations that were published in the **Federal Register** on Friday, July 20, 2007 relating to the discharge of liens under section 7425 and return of wrongfully levied property under section 6343.

FOR FURTHER INFORMATION CONTACT: Robin M. Ferguson at (202) 622–3630.

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9344) that are the subject of these corrections are under sections 7425 and 6343 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9344) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final and temporary regulations (TD 9344) that were the subject of FR Doc. E7–14053 are corrected as follows:

1. On page 39738, column 1, in the preamble, under the caption ''**FOR FURTHER INFORMATION CONTACT**:'', line 2, the language ''Robin M. Ferguson, (202) 622–3610 (not'' is corrected to read ''Robin M. Ferguson, (202) 622–3630 (not''.

2. On page 39739, column 1, in the preamble, under paragraph heading ''Drafting Information'', lines 4 and 5, the language ''and Administration (Collection, Bankruptcy and Summonses Division)'' should be corrected to read ''and Administration.''

LaNita Van Dyke,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–16651 Filed 8–22–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. CGD05–07–081]

RIN 1625–AA00

Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone upon certain waters of the Patapsco River, Northwest Harbor, and Inner Harbor during the movement of the historic sloop-of-war USS CONSTELLATION. This action is necessary to provide for the safety of life on navigable waters during the tow of the vessel from its berth at the Inner Harbor in Baltimore, Maryland, to a

point on the Patapsco River near the Fort McHenry National Monument and Historic Shrine in Baltimore, Maryland, and return. This action will restrict vessel traffic in portions of the Patapsco River, Northwest Harbor, and Inner Harbor during the event.

DATES: This rule is effective from 2 p.m. through 7 p.m. local time on September 14, 2007.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–07–081 and are available for inspection or copying at Commander, U. S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland, 21226–1791 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576–2674 or (410) 576–2693.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to the public interest, because there is not sufficient time to publish a proposed rule in advance of the event and for safety concerns, it is in the public interest to have a safety zone in place for the event, since immediate action is needed to protect persons and vessels against the potential hazards associated with the towing and turn-around of the historic sloop-of-war USS CONSTELLATION, such as collisions with other vessels operating in the confined waterways.

Background and Purpose

The USS CONSTELLATION Museum is planning to conduct a ''turn-around'' ceremony involving the sloop-of-war USS CONSTELLATION in Baltimore, Maryland on Friday, September 14, 2007. Planned events include a three-hour, round-trip tow of the CONSTELLATION in the Port of Baltimore, with an onboard salute with navy pattern cannon while the historic vessel is positioned off Fort McHenry National Monument and Historic Site. The historic Sloop-of-War USS CONSTELLATION will be towed ''dead ship,'' which means that the vessel will be underway without the benefit of mechanical or sail propulsion. The return dead ship tow of the CONSTELLATION to its berth in the Inner Harbor is expected to occur immediately upon execution of a tug-assisted turn-around of the CONSTELLATION on the Patapsco River near Fort McHenry. The Coast Guard anticipates a large recreational boating fleet during this event, scheduled on a late Friday afternoon during the summer in Baltimore, Maryland. Operators should expect significant vessel congestion along the planned route.

The purpose of this rule is to promote maritime safety and protect participants and the boating public in the Port of Baltimore immediately prior to, during, and after the scheduled event. The rule will provide for a clear transit route for the participating vessels, and provide a safety buffer around the participating vessels while they are in transit. The rule will impact the movement of all vessels operating upon certain waters of the Patapsco River, Northwest Harbor and Inner Harbor.

Discussion of Rule

The Coast Guard is establishing a temporary moving safety zone on all waters within 200 yards ahead of or 100 yards outboard or aft of the historic Sloop-of-War USS CONSTELLATION, surface to bottom, while operating in the Inner Harbor, the Northwest Harbor and the Patapsco River, at Baltimore, Maryland. The temporary safety zone will be enforced from 2 p.m. to 7 p.m. on September 14, 2007. The effect will be to restrict general navigation in the area during the event. With the exception of USS CONSTELLATION ''turn-around'' participants, no person or vessel may enter or remain in the safety zone. Vessels will be allowed to transit the waters of the Inner Harbor, the Northwest Harbor and the Patapsco River outside the safety zone. This safety zone is needed to control vessel traffic during the event to enhance the safety of transiting vessels.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this rule prevents traffic from transiting a portion of the Inner Harbor, the Northwest Harbor, and the Patapsco River during the towing and turn-around of the historic sloop-of-war USS CONSTELLATION, the effect of this rule will not be significant due to the size and duration of the safety zone, and the extensive notifications that will be made to the maritime community via marine information broadcasts and local notices to mariners, so mariners can adjust their plans accordingly. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate, remain or anchor within certain waters of the Patapsco River, Northwest Harbor and Inner Harbor, in Baltimore, Maryland, from 2 p.m. through 7 p.m. on September 14, 2007. Because the zone is of limited size and duration, it is expected that there will be minimal disruption to the maritime community. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river and harbors to allow mariners to make alternative plans for transiting the affected areas. In addition, smaller vessels not constrained by their draft, which are more likely to be small entities, may transit around the safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. However, we received no requests for assistance from any small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule establishes a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–081 to read as follows:

§ 165.T05–081 Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD.

(a) Definitions. For the purposes of this section:

(1) *Captain of the Port, Baltimore, Maryland* means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his or her behalf.

(2) *USS CONSTELLATION ''turn-around'' participants* means the USS CONSTELLATION, its support craft, and the accompanying towing vessels.

(b) Location. The following area is a moving safety zone: All waters within 200 yards ahead of or 100 yards outboard or aft of the historic Sloop-of-War USS CONSTELLATION, surface to bottom, while operating in the Inner Harbor, the Northwest Harbor, and the Patapsco River.

(c) Regulations:

(1) The general regulations governing safety zones, found in Sec. 165.23, apply to the safety zone described in paragraph (b) of this section.

(2) With the exception of USS CONSTELLATION ''turn-around'' participants, entry into or remaining in this zone is prohibited, unless authorized by the Captain of the Port, Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the moving safety zone must first request authorization from the Captain of the Port, Baltimore, Maryland to seek permission to transit the area. The Captain of the Port, Baltimore, Maryland can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF Channel 16 (156.8 MHz). Upon being

hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the person or vessel shall proceed as directed. If permission is granted, all persons or vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland, and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State and local agencies.

(e) Enforcement period. This section will be enforced from 2 p.m. through 7 p.m. on September 14, 2007.

Dated: August 9, 2007.

Austin J. Gould,

Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.

[FR Doc. E7–16630 Filed 8–22–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AM65

Disclosure of Information to Organ Procurement Organizations

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations to implement section 204 of the Veterans Benefits, Health Care, and Information Technology Act of 2006. This regulatory change will provide authority for VA to provide individually-identifiable VA medical records of veterans or dependents of veterans who are deceased or whose death is imminent to representatives of organ procurement organizations (OPOs) as defined in section 371(b) of the Public Health Service Act (PHS Act), eye banks, and tissue banks to determine whether the patients are suitable potential donors.

DATES: *Effective Date:* This interim final rule is effective August 23, 2007. Comments must be received by VA on or before October 22, 2007.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to RIN 2900-AM65—''Disclosure of Information to Organ Procurement Organizations.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephania Putt, Veterans Health Administration Privacy Officer, Office of Information (19F2), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington DC 20420, (727) 320–1839.

SUPPLEMENTARY INFORMATION: Organ procurement organizations, eye banks, and tissue banks in the United States operate under specific statutory and regulatory authority. The statutory authority is contained in specific provisions of the Social Security Act (Act) and the PHS Act.

As noted in the preface to the 1988 edition of the United States Code, because title 42, United States Code (USC), has not been enacted into positive law, the provisions in title 42, U.S.C., are prima facie evidence of the laws rather than legal evidence of the laws. Consequently, the Secretary of Health and Human Services (HHS) generally uses and refers to the provisions of the Act and the PHS Act rather than the provisions as codified in title 42, U.S.C., when implementing the provisions of those laws in regulations. *e.g.*, 21 CFR 1271.1, 1271.10. Congress enacted title 38, U.S.C., into positive law, (Pub. L. 85–857 (1958) and reorganized and renumbered in Pub. L. 102–40 and 102–83 (1991)); as a result, the provisions of title 38 as published are legal evidence of the laws contained therein. People who deal with the VA are accustomed to using the section numbering in title 38, U.S.C., as published.

Because VA cites the code sections contained in title 38 and HHS cites the sections of the public laws underlying title 42, the VA will use the HHS citation form for laws under its responsibility, and title 38 section numbers in the regulations. However, for the convenience of the persons who will interact with the VA in the course of the VA's implementation of these regulations, the VA includes the title 42, U.S.C., cross-reference for the provisions of the Act and PHS Act when first cited in the preamble and the rule.

Section 1138(a) of the Act (42 U.S.C. 1320b-8(a)), requires all hospitals or critical access hospitals to establish written protocols for the identification of potential organ donors, and for referrals of potential donors to qualified OPOs that meet the criteria of section 1138(b)(1)(A) of the Act. Section 1138(b) provides that a qualified OPO: (1) Is described in section 371(b) of the PHS Act (42 U.S.C. 273(b)) that is operating under a grant made under section 371(a) of the PHS Act, or (2) has been certified or recertified by the Secretary of Health and Human Services (HHS Secretary) within the previous two years, or four years if the Secretary determines that the organization's past practices merits such treatment as meeting the HHS Secretary's standards to be a qualified OPO. The HHS Secretary shall designate only one OPO for each service area as provided in section 371(b)(1)(E) of the PHS Act. The implementing regulations are at 42 CFR 486.301-.348.

Ocular tissue and other tissues are regulated by HHS under section 361 of the PHS Act (42 U.S.C. 264). The implementing regulations are in 21 CFR part 1271. These regulations establish the requirements for eye banks and tissue banks.

Under these respective sets of regulations, OPOs on the one hand and eye banks and tissue banks on the other hand are provided access by medical facilities to the protected health information of patients who are deceased or whose death is imminent without the prior written authorization of the patients so that representatives of the OPOs and eye banks and tissue banks may determine whether the patients may be suitable potential donors.

The rule promulgated by HHS under section 264 of the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191, 110 Stat. 1936, 2033–34 (1996)) (commonly referred to as the HIPAA Privacy Rule) provides express authority at 45 CFR 164.512(h) for disclosures of protected health information by covered health care providers to ''OPOs, or other entities engaged in the procurement, banking or transplantation of organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation'' conducted under the provisions of the PHS Act and its implementing regulations. Disclosures to eye banks and tissue banks are authorized under this language.

The Veterans Health Administration (VHA) is a covered entity under the HIPAA Privacy Rule for purposes of

care provided under chapter 17 of title 38, U.S.C. However, VHA protected health information covered by the HIPAA Privacy Rule is also covered by sections 5701 and 7332 of title 38, U.S.C. Prior to enactment of section 204 of Public Law 109–461, section 5701(a) limited VA's authority to release the names and home addresses of veterans and their dependents, and section 7332 precluded VHA from releasing protected health information concerning treatment for sickle cell anemia, drug abuse and alcoholism and alcohol abuse, and testing and treatment for the human immunodeficiency virus infection for all but a very limited number of purposes. Neither section provided statutory authority for VHA to provide protected health information on deceased patients or patients whose death was imminent to OPOs, eye banks, and tissue banks for consideration as non-living donors in the national donation programs.

Although not subject to the mandatory provisions of section 1138 of the Act and section 361 of the PHS Act, VHA tried to collaborate with OPOs, eye banks, and tissue banks in accordance with the statutes and regulations governing these entities to the extent possible within the restrictions on disclosure of individually-identified patient medical information imposed by sections 5701 and 7332. However, VHA discovered that the limitations of these statutes rendered VHA collaboration with these entities ineffective. Consequently, VA requested legislation to amend sections 5701 and 7332 to provide specific statutory authority for VHA to disclose protected health information covered by these statutes to OPOs, eye banks, and tissue banks without the prior written authorization of deceased patients or patients whose death is imminent for evaluation whether the patients may be suitable potential donors.

Congress responded by enacting section 204 of Public Law 109–461, which amended sections 5701 and 7332 of title 38, U.S.C., to authorize VHA to release information about deceased or near-death veterans or their dependants to donor organizations, so that they may determine whether these individuals are, or after death, will be suitable organ, tissue or eye donors. The legislation directs the Secretary of Veterans Affairs to prescribe regulations implementing VA's new disclosure authority by June 20, 2007.

New section 5701(k)(2) of title 38, U.S.C., specifically states that an OPO for purposes of disclosure authority under section 5701 (and under section 7332 as that statute was amended) has the meaning given the term ''qualified organ procurement organization'' in section 371(b) of the PHS Act. Section 5701(k)(1)(B)(i) provides that OPOs include eye and tissue banks. However, section 5701, as amended, does not define eye and tissue banks, and the definition of OPOs in section 371(b) of the PHS Act does not include eye and tissue banks. In fact, OPOs are not tissue banks or eye banks, although some OPOs have eye banks or tissue banks that are administratively separate from the OPOs.

The amendment to section 5701 also provides that OPOs include entities that the Secretary of Veterans Affairs has determined are ''(I) substantially similar in function, professionalism, and reliability to an organ procurement organization [as defined in section 371(b) of the PHS Act]; and (II) should be treated for purposes of this subsection in the same manner as an organ procurement organization.'' 38 U.S.C. 5701(k)(1)(B)(ii). The VA construes this language to provide authority for VA to promulgate regulations to authorize disclosure of protected health information to eye and tissue banks regulated by HHS under the authority of section 361 of the PHS Act, and the implementing regulations in 21 CFR part 1271.

As discussed above, there are long-established, dynamic, national organ, eye and tissue donation programs in the United States involving non-VHA medical facilities. HHS periodically certifies and recertifies OPOs and requires eye banks and tissue banks to register with the Food and Drug Administration in order to participate in these programs.

VHA medical facilities also perform organ, eye and tissue transplants with organs, eyes and tissues received from hospitals subject to section 1138(a) of the Act and the regulation at 42 CFR 482.45. The regulation requires every Medicare and Medicaid hospital to perform the following concerning organ, eye, and tissue procurement activities: Have an agreement with its designated OPO to report all deaths and imminent deaths to the OPO in a timely manner, collaborate with the OPO to inform families of potential donors of their donation options, and cooperate with the OPO to maintain potential donors while testing takes place. The regulation also requires hospitals to cooperate with tissue banks and eye banks to ensure that all usable tissues and eyes are obtained.

The Secretary of Veterans Affairs, in the exercise of the Secretary's discretion in administering title 38, U.S.C., has determined that in light of all factors, it is unnecessary, counterproductive and confusing to the general public for VHA to establish a separate approval process for OPOs, eye banks, and tissue banks so that VHA's medical facilities can provide information about potential donors to these entities. Consequently, VHA will disclose protected health information to certified OPOs, and to eye banks and tissue banks that have registered with the FDA, and are procuring organs, corneas, and tissues from deceased donors for the purpose of transplantation in compliance with the applicable HHS regulations. VHA will not require these organizations to submit any information or meet any requirements beyond those required by HHS. These regulations provide that VHA medical facilities are to periodically confirm with HHS its approval or certification of each OPO, eye bank or tissue bank that seeks to obtain access to VHA protected health information in order to perform its duties under HHS statutes and regulations.

Sections 5701 and 7332, as amended by section 204 of Public Law 109–461, and as implemented by these regulations, are limited to disclosure of information about veterans and their dependents. Consequently, the regulations do not address disclosure of protected health information about other individuals who may be treated in VHA medical facilities to OPOs, eye banks, or tissue banks. For example, these regulations do not apply to disclosure of protected health information about members of the armed forces because disclosure of their protected health information for donation purposes is governed by 10 U.S.C. 1109 and the implementing Department of Defense regulations.

The regulations implementing the amendments to 38 U.S.C. 5701 and 7332 are inserted in the VA regulations implementing those provisions. The regulations addressing section 7332 are at 38 CFR 1.460–.499, and the regulations concerning section 5701 are at 38 CFR 1.500–.527. As part of the interim final rule, VA is amending the definitions contained in 38 CFR 1.460 to include definitions for terms used in the new 1.485a implementing the organ donation amendments to section 7332.

The amendments to sections 5701 and 7332 concerning living patients are intended to be limited to disclosures of information about individual patients whose death is imminent. VA has provided a definition of what the term ''near death'' means for donation purposes. This definition was drafted by the VA National Transplant Program in association with the Veterans Health Administration (VHA) National Center

for Ethics, which provides guidance to VHA health care practitioners on medical ethics issues in VHA. VHA understands the proposed definition of ''near death'' to be consistent with the standard historically applied in non-VHA health care facilities when determining whether to make a living patient's medical records available for representatives of OPOs, eye banks and tissue banks, specifically under 42 CFR 482.45(a) Medicare and Medicaid hospitals will make available records on ''an individual whose death is imminent.'' However, VHA recognizes that this issue may be a sensitive subject. VA therefore specifically solicits comments on the definition of ''near death'' used in the regulations.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(3)(B), we find that there is good cause to dispense with advance public notice and opportunity to comment on this rule because any delay in promulgating the rule would be contrary to the public interest. In enacting section 204 of Public Law 109–461, Congress recognized the public's immediate need for VA's disclosure of organ donor information and specified that VA shall prescribe rules implementing the new law within 180 days. Also, as documented by information and data on *www.organdonor.gov,* the number of patients awaiting organ transplants far exceeds the number of available organs. Every day, 17 patients die waiting for an organ. VA's immediate collaboration with OPOs, eye banks, and tissue banks to facilitate organ, eye and tissue donation will result in individuals receiving life-saving or life-enhancing transplants that otherwise would be unavailable. Accordingly, it would be contrary to the intent of Congress to delay an initiative that seeks to address a compelling public need, while VA engages in advance notice and opportunity to comment. Pursuant to 5 U.S.C. 553(d), and for the reasons stated above, we also find that there is good cause to dispense with the requirement that a substantive rule be published no less than 30 days before its effective date.

Paperwork Reduction Act of 1995

This rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule governs VA's disclosure of individuals' medical records to certain Organ Procurement Organizations, eye banks, and tissue banks, some of which may be small entities. However, it will not affect a substantial number of small entities and will not have a significant economic impact on any such entity. Therefore, under 5 U.S.C. 605(b), this interim final rule is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this interim final rule have been examined and it has been determined to be a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; and 64.011, Veterans Dental Care.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: June 18, 2007.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, the Department of Veterans Affairs amends 38 CFR part 1 to read as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

■ 2. In § 1.460, add definitions for ''Agreement'', ''Deceased'', ''Eye bank and tissue bank'', ''Individual'', ''Near death'', ''Organ Procurement Organization'', ''Procurement organization'', and ''VHA health care facility'' in alphabetical order to read as follows:

§ 1.460 Definitions.

* * * * *

Agreement. The term ''agreement'' means a document that a VA health care facility develops in collaboration with an Organ Procurement Organization, eye bank or tissue bank with written, detailed responsibilities and obligations of the parties with regard to identifying potential donors and facilitating the donation process.

* * * * *

Deceased. The term ''deceased'' means death established by either neurological criteria (brain death) or cardiopulmonary criteria (cardiac death). Brain death is the irreversible

cessation of all brain function. Cardiac death is the irreversible cessation of circulatory and respiratory function. In both cases, ''irreversible'' means that function will not resume spontaneously and will not be restarted artificially.

* * * * *

Eye bank and tissue bank. The term ''eye bank and tissue bank'' means an ''establishment'' as defined in 21 CFR 1271.3, pursuant to section 361 of the Public Health Service Act (42 U.S.C. 264) that has a valid, current registration with the Federal Food and Drug Administration (FDA) as required under 21 CFR part 1271.

Individual. The term ''individual'' means a veteran, as defined in 38 U.S.C. 101(2), or a dependent of a veteran, as defined in 38 U.S.C. 101(3) and (4)(A).

* * * * *

Near death. The term ''near death'' means that in the clinical judgment of the patient's health care provider, the patient's death is imminent.

Organ Procurement Organization. The term ''Organ Procurement Organization'' (OPO) means an organization that performs or coordinates the procurement, preservation, and transportation of organs and maintains a system of locating prospective recipients for available organs.

Procurement organization. The term ''procurement organization'' means an organ procurement organization, eye bank, and/or tissue banks as defined in this section.

* * * * *

VHA health care facilty. The term ''VHA health care facility'' means a VA medical center, VA emergency room, VA nursing home or other facility as defined in 38 U.S.C. 1701(3).

* * * * *

■ 3. Add new § 1.485a, to read as follows:

§ 1.485a Eye, organ and tissue donation.

A VHA health care facility may disclose the individually-identified medical record information of an individual covered by §§ 1.460 through 1.499 of this part to an authorized representative of a procurement organization for the purpose of facilitating determination of whether the individual is a suitable potential organ, eye, or tissue donor if:

(a) The individual is currently an inpatient in a VHA health care facility;

(b) The individual is, in the clinical judgment of the individual's primary health care provider, near death or deceased;

(c) The VHA health care facility has a signed agreement with the procurement organization in accordance with the applicable requirements of the United States Department of Health and Human Services (HHS); and

(d) The VHA health care facility has confirmed with HHS that it has certified or recertified the organ procurement organization as provided in the applicable HHS regulations. VA medical centers must verify annually in January of each calendar year with the Food and Drug Administration (FDA) that an eye bank and tissue bank has complied with the FDA registration requirements of 21 CFR part 1271 before permitting an eye bank or tissue bank to receive protected health information.

(Authority: 38 U.S.C. 5701(k), 7332(b)(2)(E))

■ 4. Add new § 1.514b, to read as follows:

§ 1.514b Disclosures to procurement organizations.

A VHA health care facility may disclose the name and home address of an ''individual'' as defined in § 1.460 to an authorized representative of a ''procurement organization'' as also defined in § 1.460 for the purpose of facilitating a determination by the procurement organization of whether the individual is a suitable potential organ, eye, or tissue donor if:

(a) The individual is currently an inpatient in a VHA health care facility;

(b) The individual is, in the clinical judgment of the individual's primary health care provider, near death or is deceased as defined in § 1.460;

(c) The VHA health care facility has a signed agreement with the procurement organization in accordance with the applicable requirements of the United States Department of Health and Human Services (HHS); and

(d) The VHA health care facility has confirmed with HHS that it has certified or recertified the organ procurement organization as provided in the applicable HHS regulations. VA medical centers must verify annually in January of each calendar year with FDA that an eye bank or tissue bank has complied with the FDA registration requirements of 21 CFR Part 1271 before permitting an eye bank or tissue bank to receive protected health information.

(Authority: 38 U.S.C. 5701(k), 7332(b)(2)(E))

[FR Doc. E7–16648 Filed 8–22–07; 8:45 am]

BILLING CODE 8320–01–P

Proposed Rules

Federal Register

Vol. 72, No. 163

Thursday, August 23, 2007

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29029; Directorate Identifier 2007–NM–175–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200C Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 737–200C series airplanes. This proposed AD would require revising the FAA-approved maintenance inspection program to include inspections that will give no less than the required damage tolerance rating for each structural significant item (SSI), doing repetitive inspections to detect cracks of all SSIs, and repairing cracked structure. This proposed AD results from a report of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their design service objective. We are proposing this AD to maintain the continued structural integrity of the entire fleet of Model 737–200C series airplanes.

DATES: We must receive comments on this proposed AD by October 9, 2007.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–29029; Directorate Identifier 2007–NM–175–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground level of the West 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

In the early 1980's, as part of its continuing work to maintain the structural integrity of older transport category airplanes, we concluded that the incidence of fatigue cracking may increase as these airplanes reach or exceed their design service objective (DSO). In light of this, and as a result of increased utilization, and longer operational lives, we determined that a supplemental structural inspection program (SSIP) was necessary to maintain the continued structural integrity for all airplanes in the transport fleet.

Issuance of Advisory Circular (AC)

As a follow-on from that determination, we issued AC No. 91–56, ''Supplemental Structural Inspection Program for Large Transport Category Airplanes,'' dated May 6, 1981. That AC provides guidance material to manufacturers and operators for use in developing a continuing structural integrity program to ensure safe operation of older airplanes throughout their operational lives. This guidance material applies to transport airplanes that were certified under the fail-safe requirements of part 4b (''Airplane Airworthiness, Transport Categories'') of the Civil Air Regulations or damage tolerance structural requirements of part 25 (''Airworthiness Standards: Transport Category Airplanes'') of the Federal Aviation Regulations (FAR) (14 CFR part 25), and that have a maximum gross weight greater than 75,000 pounds. The procedures set forth in that AC are applicable to transport category airplanes operated under subpart D (''Special Flight Operations'') of part 91 of the FAR (14 CFR part 91); part 121 (''Operating Requirements: Domestic, Flag, and Supplemental Operations'');

part 125 (''Certification and Operations: Airplanes having a Seating Capacity of 20 or More Passengers or a Maximum Payload of 6,000 Pounds or More''); and part 135 (''Operating Requirements: Commuter and On-Demand Operations'') of the FAR (14 CFR parts 121, 125, and 135). The objective of the SSIP was to establish inspection programs to ensure timely detection of fatigue cracking.

Development of the SSIP

In order to evaluate the effect of increased fatigue cracking with respect to maintaining fail-safe design and damage tolerance of the structure of Boeing Model 737–200C series airplanes, Boeing conducted a structural reassessment of those airplanes, using damage tolerance evaluation techniques. Boeing accomplished this reassessment using the criteria contained in AC No. 91–56, as well as Amendment 25–45 of section 25.571 (''Damage-tolerance and fatigue evaluation of structure'') of the FAR (14 CFR 25.571). During the reassessment, members of the airline industry participated with Boeing in working group sessions and developed the SSIP for Model 737–200C series airplanes. Engineers and maintenance specialists from the FAA also supported these sessions. Subsequently, based on the working group's recommendations, Boeing developed the Supplemental Structural Inspection Document (SSID).

Other Related Rulemaking

We previously issued AD 98–11–04 R1, amendment 39–10984 (64 FR 987, January 7, 1999), applicable to all Boeing Model 737–100, –200, and –200C series airplanes (which refers to Boeing Document No. D6–37089, ''Supplemental Structural Inspection Document'' (SSID), Revision D, dated June 1995, as the appropriate source of service information for doing the required actions). That AD requires the FAA-approved maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating (DTR) for each structural significant item (SSI), and repair of cracked structure. The affected SSIs include, but are not limited to, the wing, fuselage, empennage, and strut. For Model 737–200C series airplanes, that AD requires inspecting SSIs affected by cargo configuration changes only. For Model 737–100 and –200 series airplanes, that AD requires inspecting all affected SSIs.

Relevant Service Information

We have reviewed Boeing Document No. D6–37089, ''Supplemental Structural Inspection Document for Model 737–100/200/200C Airplanes,'' Revision E, dated May 2007 (hereafter ''Revision E''). Revision E describes procedures for revising the FAA-approved maintenance inspection program to include inspections that will give no less than the required damage tolerance rating (DTR) for each SSI, doing repetitive inspections to detect cracks of all SSIs, and repairing cracked structure. The inspections specified in Revision E are essentially identical to those in Revision D. The applicability of Revision E has been updated, among other editorial changes, to show that for the Model 737–200C, SSIs not affected by cargo configuration changes are subject to the same inspections as Model 737–100 and –200 series airplanes. Accomplishing the actions specified in Revision E is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

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

Paragraph (g) of the proposed AD would require incorporation of a revision into the FAA-approved maintenance inspection program that provides no less than the required DTR for each SSI listed in Revision E.

Paragraph (h) of the proposed AD would require repetitive inspections to detect cracks of all SSIs.

Paragraph (i) of the proposed AD would require repairing any cracked structure in accordance with a method approved by the FAA or an Authorized Representative (AR) for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the FAA to make those findings.

Paragraph (j) of the proposed AD specifies the requirements of the inspection program for transferred airplanes. Before any airplane that is subject to this proposed AD can be added to an air carrier's operations specifications, a program for doing the inspections required by this proposed AD must be established.

Accomplishing the actions required by paragraphs (g) and (h) of this AD ends the requirements of AD 98–11–04 R1 for Model 737–200C series airplanes only. Operators of Model 737–100 and –200 series airplanes must continue to do the actions required by AD 98–11–04 R1.

Differences Between the Proposed AD and Service Information

For Model 737–200C series airplanes, Section 3.0, ''Structural Significant Items (SSIs),'' of Revision E specifies a threshold of 66,000 or 46,000 flight cycles for accomplishing the initial inspections, depending on the airplane configuration; however, it does not specify a grace period for airplanes that are near or have passed that threshold. This proposed AD would allow a grace period of 12 months after the effective date of the AD to incorporate Revision E into the FAA-approved maintenance inspection program. This proposed AD also would allow a grace period of 4,000 flight cycles measured from 12 months after the effective date of the AD to initiate the applicable inspections to detect cracks of all SSIs.

Revision E does not specify instructions on how to repair certain conditions. This proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that have been approved by an AR for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Costs of Compliance

There are about 49 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost	Number of U.S.-registered airplanes	Fleet cost
Revision of maintenance inspection program.	1,000, per operator (3 U.S. operators).	$80	$80,000 per operator	9	$240,000.

ESTIMATED COSTS—Continued

Action	Work hours	Average labor rate per hour	Cost	Number of U.S.-registered airplanes	Fleet cost
Inspections	500 per airplane	80	$40,000, per airplane, per inspection cycle.	9	$360,000, per inspection cycle.

The number of work hours, as indicated above, is presented as if the accomplishment of the actions in this proposed AD is to be conducted as ''stand alone'' actions. However, in actual practice, these actions for the most part will be done coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

Further, compliance with this proposed AD would be a means of compliance with the aging airplane safety final rule (AASFR) for the baseline structure of Model 737–200C series airplanes. The AASFR final rule requires certain operators to incorporate damage tolerance inspections into their maintenance inspection programs. These requirements are described in 14 CFR 121.370(a) and 129.16. Accomplishment of the actions required by this proposed AD will meet the requirements of these CFR sections for the baseline structure. The costs for accomplishing the inspection portion of this proposed AD were accounted for in the regulatory evaluation of the AASFR final rule.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–29029; Directorate Identifier 2007–NM–175–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 9, 2007.

Affected ADs

(b) Accomplishing the actions required by paragraph (g) and the initial inspections required by paragraph (h) of this AD ends the requirements of AD 98–11–04 R1, amendment 39–10984, for Model 737–200C series airplanes only. Operators of Model 737–100 and –200 series airplanes must continue to do the actions required by AD 98–11–04 R1.

Applicability

(c) This AD applies to all Boeing Model 737–200C series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their design service objective. We are issuing this AD to maintain the continued structural integrity of the entire fleet of Model 737–200C series airplanes.

Compliance

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

Service Information

(f) The term ''Revision E,'' as used in this AD, means Boeing Document No. D6–37089, ''Supplemental Structural Inspection Document for Model 737–100/200/200C Airplanes,'' Revision E, dated May 2007.

Revision of the FAA-Approved Maintenance Inspection Program

(g) At the applicable time specified in Table 1 of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides no less than the required damage tolerance rating (DTR) for each structural significant item (SSI) listed in Revision E. (The required DTR value for each SSI is listed in Revision E.) The revision to the maintenance inspection program must include and must be implemented in accordance with the procedures in Section 5.0, ''Damage Tolerance Rating (DTR) System Application,'' and Section 6.0, ''SSI Discrepancy Reporting'' of Revision E. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

TABLE 1.—COMPLIANCE TIME FOR REVISING MAINTENANCE INSPECTION PROGRAM

For airplanes with SSIs—	Compliance time
(1) Affected by the cargo configuration.	Before the accumulation of 46,000 total flight cycles, or within 12 months after the effective date of this AD, whichever occurs later.
(2) Not affected by the cargo configuration.	Before the accumulation of 66,000 total flight cycles, or within 12 months after the effective date of this AD, whichever occurs later.

Initial and Repetitive Inspections

(h) At the applicable time specified in Table 2 of this AD, do the applicable initial inspections to detect cracks of all SSIs, in accordance with Revision E. Repeat the applicable inspections thereafter at the intervals specified in Section 3.0, ''Implementation'' of Revision E.

TABLE 2.—COMPLIANCE TIME FOR INITIAL INSPECTIONS

For airplanes with SSIs—	Compliance time
(1) Affected by the cargo configuration.	Before the accumulation of 46,000 total flight cycles, or within 4,000 flight cycles measured from 12 months after the effective date of this AD, whichever occurs later.
(2) Not affected by the cargo configuration.	Before the accumulation of 66,000 total flight cycles, or within 4,000 flight cycles measured from 12 months after the effective date of this AD, whichever occurs later.

Repair

(i) If any cracked structure is found during any inspection required by paragraph (h) of this AD, before further flight, repair the cracked structure using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

Inspection Program for Transferred Airplanes

(j) Before any airplane that is subject to this AD and that has exceeded the applicable compliance times specified in paragraph (h) of this AD can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established in accordance with paragraph (j)(1) or (j)(2) of this AD, as applicable.

(1) For airplanes that have been inspected in accordance with this AD: The inspection of each SSI must be done by the new operator in accordance with the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment for that SSI inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been done once, each subsequent inspection must be performed in accordance with the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected in accordance with this AD: The inspection of each SSI required by this AD must be done either before adding the airplane to the air carrier's operations specification, or in accordance with a schedule and an inspection method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. After each inspection has been done once, each subsequent inspection must be done in accordance with the new operator's schedule.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair approval must specifically refer to this AD.

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

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–16656 Filed 8–22–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26110; Directorate Identifier 2006–NM–112–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 747–400D, and 747–400F Series Airplanes

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposed airworthiness directive (AD) for certain Boeing Model 747–400, 747–400D, and 747–400F series airplanes. The original NPRM would have required replacement of an electronic flight instrument system/engine indicating and crew alerting system (EFIS/EICAS) interface unit (EIU) located on the E2–6 shelf of the main equipment center with a new or modified EIU. The original NPRM resulted from two instances where all six integrated display units (IDUs) on the flight deck panels went blank in flight. This action revises the original NPRM by reducing the compliance time for replacing the EIU. We are proposing this supplemental NPRM to prevent loss of the IDUs due to failure of all three EIUs, which could result in the inability of the flightcrew to maintain safe flight and landing of the airplane.

DATES: We must receive comments on this supplemental NPRM by September 17, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this supplemental NPRM.

- *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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Jay Yi, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6494; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–26110; Directorate Identifier 2006–NM–112–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, 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 supplemental NPRM. 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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground level of the West 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

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an AD (the ''original NPRM'') for certain Boeing Model 747–400, 747–400D, and 747–400F series airplanes. The original NPRM was published in the **Federal Register** on October 26, 2006 (71 FR 62568). The original NPRM proposed to require replacement of an electronic flight instrument system/engine indicating and crew alerting system (EFIS/EICAS) interface unit (EIU) located on the E2–6 shelf of the main equipment center with a new or modified EIU.

Comments

We have considered the following comments on the original NPRM.

Support for the Original NPRM

Boeing and the National Transportation Safety Board (NTSB) support the original NPRM.

Request To Reduce Compliance Time

The NTSB requests that we revise the original NPRM to reduce the compliance time from 60 months to 24 months. The NTSB asserts that replacing the EIUs does not require an airplane to be out of service for a long period of time, and that the replacement is more limited by the availability of modified units. The NTSB suggests that a 24-month compliance time would allow operators enough time to replace the units as soon as they become available without eliminating an operator's operational flexibility.

We agree to reduce the compliance time to 24 months for replacing an EIU with a modified EIU. At the time we issued the original NPRM, there was an insufficient number of modification kits available to require a compliance time of less than 60 months. However, since issuance of the NPRM the manufacturer has confirmed that enough kits will be available to replace at least one EIU on the affected airplanes within the shorter compliance time. In light of this new information, we have determined that a 24-month compliance time will ensure an acceptable level of safety and allow the replacement to be done during scheduled maintenance intervals for most affected operators. We have revised paragraph (f) of this supplemental NPRM accordingly.

Request To Require Replacement of All Three EIUs

The NTSB requests that we revise the original NPRM to require replacement of all three EIUs. As justification, the NTSB states that if only one EIU is replaced and that modified unit suffers an unrelated fault removing it from operation, the airplane would still be exposed to the potential for the integrated display units (IDUs) to go blank without the EIU auto restart capability. The NTSB further states that it would like to ensure that the minimum equipment list (MEL) and dispatch requirements are reviewed to minimize this potential.

Although we understand the NTSB's concern, we do not agree to revise this supplemental NPRM. We have considered the probability of the modified EIU failing and have concluded that such a failure is remote enough that an acceptable level of safety is maintained by replacement of only one EIU. Further, according to sections 121.628(b)(2) and 91.213(b)(2) of the Federal Aviation Regulations (14 CFR 121.628(b)(2) and 91.213(b)(2)), instruments and equipment required by an AD to be in operable condition may not be included in the MEL unless the AD provides otherwise. This means that an operator cannot dispatch an airplane if the modified unit fails. To dispatch the airplane, the operator must replace the failed unit with an operable unit equipped with the auto restart circuitry. Further, since we have reduced the compliance time, the parts manufacturer will only be able to produce enough modification kits in time to allow all operators to replace one EIU. For fleet management reasons, operators are likely to eventually replace all three EIUs with modified parts, as parts become available. The unsafe condition has been further mitigated by the issuance of the Boeing 747–400 Flight Crew Operations Manual Bulletin TB1–20, ''Flight Deck Display Unit Blanking Anomaly,'' dated February 25, 2003, to the Boeing 747 Flight Crew Operations Manual. That document advises flightcrews of the problem and provides instructions for restarting the EIUs should there be a display blanking problem during operation. We have not revised this supplemental NPRM in this regard.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The change discussed above expands the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Costs of Compliance

There are about 639 airplanes of the affected design in the worldwide fleet. This supplemental NPRM would affect about 79 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.

Required parts would cost about $2,840 per airplane (for one EIU). Based on these figures, the estimated cost of this supplemental NPRM for U.S. operators is $230,680, or $2,920 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 supplemental NPRM and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2006–26110; Directorate Identifier 2006–NM–112–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 17, 2007.

Affected ADs

(b) Accomplishing paragraph (f) of this AD for all three electronic flight instrument system/engine indicating and crew alerting system (EFIS/EICAS) interface units (EIUs) terminates certain requirements of AD 2004–10–05, amendment 39–13635.

Applicability

(c) This AD applies to Boeing Model 747–400, 747–400D, and 747–400F series airplanes, certificated in any category; as identified in Boeing Service Bulletin 747–31–2368, Revision 1, dated July 24, 2006.

Unsafe Condition

(d) This AD results from two instances where all six integrated display units (IDUs) on the flight deck panels went blank in flight. We are issuing this AD to prevent loss of the IDUs due to failure of all three EIUs, which could result in the inability of the flightcrew to maintain safe flight and landing 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.

Replacement

(f) Within 24 months after the effective date of this AD, replace at least one of the three EIUs, part number (P/N) 622–8589–104, located on the E2–6 shelf of the main equipment center with a new or modified EIU, P/N 622–8589–105, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–31–2368, Revision 1, dated July 24, 2006.

Note 1: Boeing Service Bulletin 747–31–2368, Revision 1, dated July 24, 2006, refers to Rockwell Collins Service Bulletin EIU–7000–31–502, dated March 21, 2006, as an additional source of service information for modifying an EIU by adding auto restart circuitry, which converts EIU P/N 622–8589–104 to P/N 622–8589–105.

Credit for Actions Done According to Previous Service Bulletin

(g) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 747–31–2368, dated November 22, 2005 (Revision 1 of the service bulletin specifies that the original issue is dated December 1, 2005), are acceptable for compliance with the corresponding requirements of paragraph (f) of this AD.

Credit for AD 2004–10–05

(h) Replacing all three EIUs with new or modified EIUs in accordance with paragraph (f) of this AD is acceptable for compliance with only the EIU replacement of paragraph (d)(1) of AD 2004–10–05. All other actions required by paragraph (d)(1) of AD 2004–10–05 must be complied with.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on August 16, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–16659 Filed 8–22–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–128224–06]

RIN 1545–BF80

Section 67 Limitations on Estates or Trusts; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to notice of proposed rulemaking that was published in the **Federal Register** on Friday, July 27, 2007 providing guidance on which costs incurred by estates or non-grantor trusts are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a).

FOR FURTHER INFORMATION CONTACT: Jennifer N. Keeney at (202) 622–3060.

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–128224–06) that is the subject of these corrections is under section 67 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–128224–06) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–128224–06) that was the subject of FR Doc. E7–14489 is corrected as follows:

On page 41245, column 1, in the preamble, under the paragraph heading ''Drafting Information'', line 3, the language ''of the Office of Associate Chief Counsel'' is corrected to read ''of the Associate Chief Counsel''.

LaNita Van Dyke,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–16615 Filed 8–22–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 26

[REG–128843–05]

RIN 1545–BE70

Severance of a Trust for Generation-Skipping Transfer (GST) Tax Purposes II; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to notice of proposed rulemaking that was published in the **Federal Register** on Thursday, August 2, 2007 providing guidance regarding the generation-skipping transfer (GST) tax consequences of the severance of trusts in a manner that is effective under state law, but that does not meet the requirements of a qualified severance. These proposed regulations also provide guidance regarding the GST tax consequences of a qualified severance of a trust with an inclusion ratio between zero and one into more than two resulting trusts and provide special funding rules applicable to the non pro rata division of certain assets between or among resulting trusts.

FOR FURTHER INFORMATION CONTACT: Mayer R. Samuels at (202) 622–3090.

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–128843–05) that is the subject of this correction is under section 2642 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–128843–05) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–128843–05) that was the subject of FR Doc. E7–14850 is corrected as follows:

§ 26.2642–6 [Corrected]

On page 42343, column 3, § 26.2642–6(k)(1), lines 7 through 10, the language ''severances occurring on or after [DATE THIS DOCUMENT IS PUBLISHED IN THE **Federal Register** AS FINAL REGULATIONS]. Paragraph (d)(4) and'' is corrected to read ''severances occurring on or after August 2, 2007. Paragraph (d)(4) and''.

LaNita Van Dyke,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–16619 Filed 8–22–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–148951–05]

RIN 1545–BF54

Change to Office To Which Notices of Nonjudicial Sale and Requests for Return of Wrongfully Levied Property Must Be Sent; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains corrections to notice of proposed rulemaking by cross-reference to temporary regulations that was published in the **Federal Register** on Friday, July 20, 2007 relating to the discharge of liens under section 7425 and return of wrongfully levied property under section 6343.

FOR FURTHER INFORMATION CONTACT: Robin M. Ferguson at (202) 622–3630.

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations (REG–148951–05) that is the subject of these corrections is under sections 7425 and 6343 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–148951–05) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–148951–05) that was the subject of FR. Doc. E7–14051 is corrected as follows:

1. On page 39771, column 3, in the preamble, under the caption ''**FOR FURTHER INFORMATION CONTACT:**'', line 1, the language ''Robin M. Ferguson, (202) 622–3610; is corrected to read ''Robin M. Ferguson, (202) 622–3630;''.

2. On page 39772, column 1, in the preamble, under paragraph heading ''Drafting Information'', lines 4 and 5, the language ''and Administration (Collection, Bankruptcy and Summonses Division)'' should be corrected to read ''and Administration.''

LaNita Van Dyke,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–16624 Filed 8–22–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. CGD01–07–102]

RIN 1625–AA08

Special Local Regulation; Head of the Connecticut Regatta

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to change the special local regulations for the Head of the Connecticut Regatta by moving the regulated area of the race from the southern tip of Gildersleeve Island and Light Number 87 to the

northern tip of Gildersleeve Island and Light Number 87. This regulation is needed to better protect race participants from recreational and commercial vessel traffic.

DATES: Comments and related material must reach the Coast Guard on or before September 24, 2007.

ADDRESSES: You may mail comments and related material to Waterways Management Division, U.S. Coast Guard Sector Long Island Sound, 120 Woodward Ave., New Haven, CT 06512–3628. Sector Long Island Sound maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Sector Long Island Sound between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Douglas Miller, Chief, Waterways Management Division, Coast Guard Sector Long Island Sound at (203) 468–4596.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD01–07–102], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like assurance that they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for such a meeting by writing to Coast Guard Sector Long Island Sound at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The permanent special local regulations for the Head of the Connecticut Regatta are found at 33 CFR 100.105. The Coast Guard is proposing to change regulation 100.105(a), which states the boundaries of the regulated area. The new boundary increases the size of the regulated area. Historically, the number of vessels mustering at the start of the race has grown to such a level that it is no longer safe to allow non-participant recreational and commercial vessels to transit near the southern tip of Gildersleeve Island. Regardless of the amount of planning and control in past years, recreational vessel traffic has steadily encroached into the starting area of the race. Accordingly, the Coast Guard proposes to alter section 100.105(a) to permanently move the regulated area of the race zone from the southern tip of Gildersleeve Island and Light Number 87 to the northern tip of Gildersleeve Island and Light Number 87.

Discussion of Proposed Rule

The Coast Guard proposes to amend the regulations at 33 CFR 100.105 to expand the regulated area of the Head of the Connecticut Regatta. The changes are necessary to improve the safety of participant and spectator vessels in vicinity of the start area of the race. These proposed changes are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: The zone would only be enforced for a temporary period on the day of the event and vessels may transit in all areas around the zone at all times.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the vicinity of Gildersleeve Island on the day of the event.

For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Douglas Miller, Chief, Waterways Management Division, Coast Guard Sector Long Island Sound at (203) 468–4596. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. Draft documentation supporting this preliminary determination will be available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Amend § 100.105 to revise paragraph (a) to read as follows:

§ 100.105 Head of the Connecticut Regatta.

(a) *Regulated Area.* The regulated area is that section of the Connecticut River between the northern tip of Gildersleeve Island and Light Number 87.

* * * * *

Dated: August 10, 2007.

Timothy V. Skuby,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. E7–16627 Filed 8–22–07; 8:45 am]

BILLING CODE 4910–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

[Docket No. 2007–04]

RIN 3014–AA22

Accessibility Guidelines for Emergency Transportable Housing

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of establishment; appointment of members; date of first meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has decided to establish an advisory committee to assist it in developing accessibility guidelines for emergency transportable housing. This notice also announces the time and place of the first committee meeting.

DATES: The first meeting of the committee is scheduled for September 24 and 25, 2007 beginning at 10 a.m. on September 24 and 9 a.m. on September 25 and ending at 5 p.m. on each day. Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter.

ADDRESSES: The first meeting of the Committee will be held at the Access Board's offices, 1331 F Street, NW., suite 1000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0020 (Voice); (202) 272–0082 (TTY). These are not toll-free numbers. E-mail address: *mazz@access-board.gov*.

SUPPLEMENTARY INFORMATION: On June 25, 2007, the Architectural and

Transportation Barriers Compliance Board (Access Board) published a notice of intent to establish an advisory committee to provide recommendations for possible revisions to the Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Accessibility Guidelines to include provisions for emergency transportable housing (72 FR 34652; June 25, 2007).

For the reasons stated in the notice of intent, the Access Board has determined that establishing the Emergency Transportable Housing Advisory Committee (Committee) is necessary and in the public interest. The Access Board has appointed the following organizations as members to the Committee:

- Advocacy Center.
- Coalition for Citizens with Disabilities.
- Department of Housing and Urban Development.
- Department of Justice.
- Federal Emergency Management Agency.
- Manufactured Housing Association for Regulatory Reform.
- Manufactured Housing Institute.
- National Center for Environmental Health Strategies, Inc.
- National Council on Independent Living.
- National Fire Protection Association.
- Recreation Park Trailer Industry Association.
- Recreation Vehicle Industry Association.
- United Spinal Association.

The Access Board regrets its inability to accommodate all requests for membership on the Committee. It was necessary to limit membership to maintain balance among members representing different interests such as disability organizations and the transportable housing industry. The Committee membership identified above provides representation for interests affected by the issues to be discussed.

Committee meetings will be open to the public, and interested persons can attend the meetings and communicate their views. Members of the public will have opportunities to address the Committee on issues of interest to them and the Committee. Members of groups or individuals who are not members of the Committee may also have the opportunity to participate if subcommittees of the Committee are formed. Additionally, all interested persons will have the opportunity to comment when proposed rules are issued in the **Federal Register** by the Access Board.

The meeting site is accessible to individuals with disabilities. Individuals who require sign language interpreters, real-time captioning, or materials in alternate formats should contact Marsha Mazz by September 14. Persons attending Committee meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants. Notices of future meetings will be published in the **Federal Register**.

Tricia Mason,

Chair, Architectural and Transportation Barriers Compliance Board.

[FR Doc. E7–16707 Filed 8–22–07; 8:45 am]

BILLING CODE 8150–01–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1193 and 1194

RIN 3014–AA22

Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established a Telecommunications and Electronic and Information Technology Advisory Committee (Committee) to assist it in revising and updating accessibility guidelines for telecommunications products and accessibility standards for electronic and information technology. This notice announces the dates, time, and location of the next committee meeting.

DATES: The meeting is scheduled for September 4–6, 2007 (beginning at 9 a.m. and ending at 5 p.m. on each day).

ADDRESSES: The meeting will be held at the National Science Foundation. All attendees should report to the National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, to pick up security passes and then report to 4121 Wilson Boulevard, Stafford Place II, Room 555, Arlington, VA 22230 for the meeting.

FOR FURTHER INFORMATION CONTACT: Timothy Creagan, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number: 202–272–0016 (Voice); 202–272–0082 (TTY). Electronic mail address: *creagan@access-board.gov.*

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (Access Board) established the Telecommunications and Electronic and Information Technology Advisory Committee (Committee) to assist it in revising and updating accessibility guidelines for telecommunications products and accessibility standards for electronic and information technology. The next meeting of the Committee will take place on September 4–6, 2007.

On September 4, there will be panel discussions in the morning focusing on feedback on the Committee's current draft provisions. Following the panel presentations there will be an open discussion. After the panel presentations and open discussion are completed, the remainder of the meeting on September 4 and the meetings on September 5 and 6 will focus on discussion of outstanding issues from the following subcommittees:

- Software, Web, and Content
- General Interface Requirements and Functional Performance Criteria
- Computer Hardware
- Subpart A
- Documentation and Technical Support
- Telecommunications
- Audio/Visual
- Self Contained, Closed Products

The full agenda along with information about the Committee, including future meeting dates, is available at the Access Board's Web site (*http://www.access-board.gov/sec508/update-index.htm*) or at a special Web site created for the Committee's work (*http://teitac.org*).

Committee meetings are open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have opportunities to address the Committee on issues of interest to them during public comment periods scheduled on each day of the meeting. Members of groups or individuals who are not members of the Committee are invited to participate on subcommittees; participation of this kind is very valuable to the advisory committee process.

The meeting site is accessible to individuals with disabilities. Sign language interpreters, an assistive listening system, and real-time captioning will be provided. For the comfort of other participants, persons attending Committee meetings are requested to refrain from using perfume, cologne, and other fragrances. Due to

security measures at the National Science Foundation, all attendees must notify the Access Board's receptionist at 202–272–0007 or *receptionist@access-board.gov* by August 27, 2007 of their intent to attend the meeting. This notification is required for expeditious entry into the facility and will enable the Access Board to provide additional information as needed.

Lawrence W. Roffee,

Executive Director.

[FR Doc. E7–16635 Filed 8–22–07; 8:45 am]

BILLING CODE 8150–01–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1195

[Docket No. 2007–02]

RIN 3014–AA22

Architectural Barriers Act (ABA) Accessibility Guidelines for Outdoor Developed Areas

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of hearing.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) will hold a hearing on proposed accessibility guidelines for outdoor developed areas designed, constructed, or altered by Federal agencies subject to the Architectural Barriers Act of 1968. The guidelines cover trails, outdoor recreation access routes, beach access routes, and picnic and camping facilities.

DATES: The hearing will be on September 26, 2007 from 2 p.m. until 5 p.m.

ADDRESSES: The hearing will be held at the Indiana Convention Center, Room 102, 100 South Capitol Avenue, Indianapolis, IN 46225.

FOR FURTHER INFORMATION CONTACT: Bill Botten, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0014 (Voice); (202) 272–0082 (TTY). These are not toll-free numbers. E-mail address: *botten@access-board.gov*.

SUPPLEMENTARY INFORMATION: On June 20, 2007, the Architectural and Transportation Barriers Compliance Board (Access Board) published proposed accessibility guidelines in the **Federal Register** for outdoor developed areas designed, constructed, or altered by Federal agencies subject to the Architectural Barriers Act of 1968. 72 FR 34074 (June 20, 2007). The Architectural Barriers Act applies to federally financed facilities. The guidelines cover trails, outdoor recreation access routes, beach access routes, and picnic and camping facilities.

The guidelines are available for public comment until October 18, 2007. The Board is also holding hearings on the proposed guidelines. One hearing was held in Westminster, CO on July 24 (comments from the hearing can be viewed at *http://www.access-board.gov/outdoor/nprm/comments/index.htm*). Another hearing will take place during the Access Board's regularly scheduled Board meeting on September 6, 2007 from 2 p.m. until 5 p.m. at the Madison Hotel, 1177 Fifteenth Street, NW., Washington, DC 20005. 72 FR 34074 (June 20, 2007).

The final hearing will take place on September 26, 2007 from 2 p.m. until 5 p.m. at the Indiana Convention Center, Room 102, 100 South Capitol Avenue, Indianapolis, IN 46225 in conjunction with the National Recreation and Park Association's annual Congress and Exposition. The hearing location is accessible to individuals with disabilities. Sign language interpreters and real-time captioning will be provided. For the comfort of other participants, persons attending the hearing are requested to refrain from using perfume, cologne, and other fragrances.

Tricia Mason,

Chair, Architectural and Transportation Barriers Compliance Board.

[FR Doc. E7–16623 Filed 8–22–07; 8:45 am]

BILLING CODE 8150–01–P

Notices

Federal Register

Vol. 72, No. 163

Thursday, August 23, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Information Collection: 2005–2006 Dairy Disaster Assistance Payment (DDAP–III) Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Commodity Credit Corporation (CCC) is seeking comments from all interested individuals and organizations on a currently approved information collection with revision associated with Dairy Disaster Assistance Payment (DDAP–III) Program. This collection is necessary to gather specific information from producers on their dairy production losses suffered in counties declared a natural disaster during the period of January 2, 2005, through February 27, 2007. The collection of information is to be used to establish eligibility and to determine payment amounts.

DATES: We will consider comments received by October 22, 2007.

ADDRESSES: We invite you to submit comments on this Notice. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

E-Mail: Send comments to: *Danielle_Cooke@wdc.fsa.usda.gov*.

Fax: (202) 690–1536.

Mail: Farm Service Agency, USDA, Attn: Grady Bilberry, Director, Price Support Division, Farm Service, USDA, FSA, STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250–0513.

Comments also should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Danielle Cooke, Special Program Manager, phone: (202) 720–1919, or Grady Bilberry, Director, Price Support Division, (202) 720–7901.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: 2005–2006 Dairy Disaster Assistance Payment Program.

OMB Control Number: 0560–0252.

Type of Request: Revision of a currently approved collection.

Abstract: Dairy operations are eligible to receive direct payments provided they make certifications that attest to their eligibility to receive such payments. As appropriate, these operations must certify and identify:

(1) That the dairy operation is physically located in a county declared a natural disaster after January 1, 2005 and before February 28, 2007 (that is the period of January 2, 2005 through February 27, 2007);

(2) the identity of actual persons associated with that operation during that period;

(3) the pounds of dairy production losses incurred as a result of the declared natural disaster;

(4) the number of cows in the dairy operation during the calendar year applicable to the disaster declaration;

(5) that they understand the dairy operation must provide adequate proof of annual milk production commercially marketed by all persons in the dairy operation during the period specified by the Commodity Credit Corporation (CCC) to determine the total pounds of eligible losses incurred by the operation.

The information collection is used by CCC to determine the program eligibility of the dairy operations. CCC considers the information collected essential to prudent eligibility determinations and payment calculations. The revision on the information collection covers only the dairy production losses this time, and the number of respondents increases in this information collection. Additionally, without accurate information on dairy operations, the national payment rate would be inaccurate, resulting in payments being made to ineligible recipients, and the integrity and accuracy of the program could be compromised.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes (.25 hour) per response. The average travel time, which is included in the total annual burden, is estimated to be 1 hour per respondent.

Respondents: Dairy Operations.

Estimated Number of Respondents: 40,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 35,250 hours.

Comments

Comments are invited on:

(1) Whether this collection information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) the accuracy of the agency's estimate of burden, 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 the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public records. Comments will be summarized and included in the submission for Office of Management and Budget approval. OMB is required to make a decision concerning the collection of information contained in the proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Signed at Washington, DC, on August 16, 2007.

Glen L. Keppy,

Acting Executive Vice President, Commodity Credit Corporation, Administrator, Farm Service Agency.

[FR Doc. E7–16671 Filed 8–22–07; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: A Wood Education and Resource Center Training Registry

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection for a Wood Education and Resource Center Training Registry.

DATES: Comments must be received in writing on or before October 22, 2007 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Al Steele, Forest Service, USDA, 180 Canfield Street, Morgantown, WV 26505.

Comments also may be submitted via facsimile to 304–285–1505 or by e-mail to: *asteele@fs.fed.us.*

The public may inspect comments received at Room #215 Forest Service, USDA, 180 Canfield Street, Morgantown, WV 26505 during normal business hours. Visitors are encouraged to call ahead to 304–285–1588 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Al Steele, Forest Service, USDA, 180 Canfield Street, Morgantown, WV 26505. Phone: 304–285–1588.

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: Wood Education and Resource Center Training Registry

OMB Number: 0596–New.

Type of Request: New.

Abstract:

The USDA Forest Service is developing an online training information system that will enable individuals (trainees) from the primary and secondary wood products industries to locate continuing education training opportunities (such as workshops and short courses) that meet criteria they have established. Trainees can browse through or search for available training opportunities contained in the database, or be informed of relevant workshops and short courses via an e-mail notification system.

Information will be collected through a voluntary online registration system. Training providers will register courses and workshops through an online registration system. Trainees will register through an online form and specify their training needs from a select list of pre-defined categories.

Information to be collected from Training Providers includes: Name, Organization, Location, Telephone Number, Organizational Category and E-mail address, Title of the Training Program, Organization Sponsoring/Conducting the Program, Program Instructors and short biographical information and picture, Workshop Dates and Times, Workshop Location, Registration Fee, Short Description of the Program (30 words), Long Description of the Program (300–1200 words), Course Benefits, Target Audience, Name of Contact Person for Further Information, Telephone Number for Further Information, E-mail Address for Further Information, URL of Web site for Further Information, and Workshop Category from a Predefined List of Categories and Subcategories.

Information to be collected from trainees includes: Name, Occupation/Job Title, Company Name, Industry Category, Location and E-mail address, Training Interests selected from a predefined list of training categories and subcategories, and Frequency of Notification.

Information will be collected from organizations, academic institutions, trade associations, government agencies, companies and consultants that offer continuing education courses for the primary and secondary forest products industry; and individuals within the primary and secondary forest products industry that seek training opportunities.

The collected information will enable trainees to browse through or search for available training opportunities contained in the database, or be informed of relevant workshops and short courses via an e-mail notification system.

The automated notification system will operate by matching training preferences that have been predefined by the trainee with training offerings available from training providers. Participating training organizations (training providers) will register available courses online thru the Online Training Services Registry System. Once a match has been made between the trainee's needs and a course(s) available from a training organization, a notice will be sent to the trainee with additional information on course content, contact information, and related data.

The U.S. Forest Service Wood Education Resource Center will operate and maintain the training information system including use statistics.

The Training Information System is designed to provide a service to training providers and employees (trainees) associated with the primary and secondary forest products industry. Enhancing training opportunities for this industry will keep these national industries competitive in a world market.

Estimate of Annual Burden: 10–20 minutes per respondent (10 minutes for trainees; 20 minutes for training providers).

Type of Respondents: Respondents include individuals (trainees, from the primary and secondary forest products industries) and businesses (providers of continuing education training opportunities, such as workshops and short courses, for the primary and secondary wood products industries).

Estimated Annual Number of Respondents: 3,325 (3,200 trainees and 125 training providers).

Estimated Annual Number of Responses per Respondent: 5 for trainees; 20 for training providers.

Estimated Total Annual Burden on Respondents: 3,501 hours (2,667 hours—trainees, 834 hours—trainers).

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 received will be summarized and included in the request for Office of Management and Budget approval.

Dated: August 17, 2007.

Robin L. Thompson,

Associate Deputy Chief.

[FR Doc. E7–16663 Filed 8–22–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ouachita-Ozark Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Meeting notice for the Ouachita-Ozark Resource Advisory Committee under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Ouachita-Ozark Resource Advisory Committee pursuant to Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, Public Law 106–393. Topics to be discussed include: General information, proposed new Title II projects, updates on current or completed Title II projects, election of officers, and, if appropriate, next meeting date and agenda.

DATES: The meeting will be held on September 11, 2007, beginning at 6 p.m. and ending at approximately 9 p.m.

ADDRESSES: The meeting will be held at the Scott County Courthouse, 100 W. First Street, Waldron, AR 71958.

FOR FURTHER INFORMATION CONTACT: Caroline Mitchell, Committee Coordinator, USDA, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902. (501–321–5318).

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff, Committee members, and elected officials. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Individuals wishing to speak or propose agenda items must send their names and proposals to Bill Pell, DFO, P.O. Box 1270, Hot Springs, AR 71902.

Dated: August 16, 2007.

Bill Pell,

Designated Federal Official.

[FR Doc. 07–4128 Filed 8–22–07; 8:45 am]

BILLING CODE 3410–52–M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Revised Notice of Meetings of the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee

AGENCIES: Forest Service, U.S. Department of Agriculture; and Bureau of Land Management, U.S. Department of the Interior.

ACTION: Revised notice of meetings of the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee for 2007 and 2008.

SUMMARY: The Santa Rosa and San Jacinto Mountains National Monument Advisory Committee (Monument Advisory Committee) will meet as indicated below.

DATES:
- September 8, 2007.
- December 1, 2007.
- March 1, 2008.
- June 7, 2008.
- September 6, 2008.
- December 6, 2008.

All meetings of the Monument Advisory Committee will start at 9 a.m. and conclude at 1 p.m.

ADDRESSES: Meetings of the Monument Advisory Committee will be held at the County of Riverside Permit Assistance Center, Second Floor Conference Room, 38686 El Cerrito Road, Palm Desert, California.

FOR FURTHER INFORMATION CONTACT: Jim Foote, Monument Manager, Santa Rosa and San Jacinto Mountains National Monument, c/o Bureau of Land Management, P.O. Box 581260, North Palm Springs, CA 92258; phone (760) 251–4800.

SUPPLEMENTARY INFORMATION: This notice identifies a change in location for meetings of the Monument Advisory Committee as published in the **Federal Register** on April 24, 2007 (72 FR 20321).

Meetings of the Monument Advisory Committee focus on implementation of the Santa Rosa and San Jacinto Mountains National Monument Management Plan. A public comment period when members of the public may address the Monument Advisory Committee will occur at 11 a.m. during each meeting. Written comments may be sent to the Monument Manager at the address listed above. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: August 10, 2007.

Jim Foote,

Monument Manager, Santa Rosa and San Jacinto Mountains National Monument.

[FR Doc. 07–4136 Filed 8–22–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Lost Creek Watershed, Newton County, MO

AGENCY: Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lost Creek Watershed, Newton County, Missouri.

FOR FURTHER INFORMATION CONTACT: Harold Deckerd, Assistant State Conservationist, Natural Resources Conservation Service, 601 Business Loop 70 West, Parkade Center, Suite 250, Columbia, Missouri 65203, (573) 876–0912.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Roger A. Hansen, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project. The project purposes are to rehabilitate the existing Structure B–2 in order to comply with state and federal dam safety regulations and maintain flood damage reductions. The planned works of improvement include widening the auxiliary spillway, lowering the control section of the auxiliary spillway, and lowering the inlet of the principal spillway. The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A

limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harold L. Deckerd, Assistant State Conservationist (WR) at (573) 876–0912.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Roger A. Hansen,

State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO.10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials.)

[FR Doc. E7–16703 Filed 8–22–07; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–533–845)

Glycine from India: Postponement of Preliminary Determination of Antidumping Duty Investigation

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

EFFECTIVE DATE: August 23, 2007.

FOR FURTHER INFORMATION CONTACT: George Callen or Kristen Case, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0180 and (202) 482–3174, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determination

On April 19, 2007, the Department of Commerce (the Department) initiated the antidumping duty investigations of Glycine from India, Japan, and the Republic of Korea. See *Glycine from India, Japan, and the Republic of Korea: Initiation of Antidumping Duty Investigations*, 72 FR 20816 (April 26, 2007). The notice of initiation stated that the Department would issue its preliminary determinations for these investigations no later than 140 days after the date of issuance of the initiation (*i.e.*, September 6, 2007), in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act).

On August 10, 2007, the petitioner, Geo Speciality Chemicals, Inc., made a timely request pursuant to 19 CFR 351.205(e) for a postponement of the preliminary determination with respect to India. The petitioner requested postponement of the preliminary determination in order to allow the Department additional time to determine whether the two mandatory respondents will supply complete responses and participate fully in the investigation.

For the reason identified by the petitioner and because there are no compelling reasons to deny the request, the Department is postponing the deadline for the preliminary determination with respect to India under section 733(c)(1)(A) of the Act by 50 days to October 26, 2007. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published pursuant to sections 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 16, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–16690 Filed 8–22–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–331–802

Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Ecuador: Notice of Determination Under section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Ecuador

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

SUMMARY: On August 15, 2007, the U.S. Trade Representative instructed the Department of Commerce (the Department) to implement its determination under section 129 of the Uruguay Round Agreements Act (URAA) regarding the investigation of frozen warmwater shrimp from Ecuador. The Department issued its determination on July 26, 2007, regarding the offsetting of dumped sales with non–dumped sales when making average–to-average comparisons of export price and normal value in the investigation challenged by Ecuador before the World Trade Organization. The Department is now implementing this determination.

DATES: The effective date of this determination is August 15, 2007.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Irene Darzenta Tzafolias, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–4136, or (202) 482–0922, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 2007, the Department advised interested parties that it was initiating a proceeding under section 129 of the URAA to issue a determination that would implement the findings of the World Trade Organization (WTO) dispute settlement panel in *United States - Antidumping Measure on Shrimp from Ecuador*, WT/DS335/R (January 30, 2007) (*Panel Report*). On May 31, 2007, the Department issued its preliminary results, in which it recalculated the weighted–average dumping margins from the antidumping investigation of frozen warmwater shrimp from Ecuador[1] by applying the calculation methodology described in *Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Investigation; Final Modification*; *see* 71 FR 77722 (December 27, 2006). The Department also invited interested parties to comment on the preliminary results. After receiving comments and rebuttal comments from the interested parties, the Department issued its final results for the section 129 determination on July 26, 2007.

On August 9, 10 and 13, 2007, consistent with section 129(b)(3) of the URAA, the U.S. Trade Representative held consultations with the Department and the appropriate congressional committees with respect to this determination. On August 15, 2007, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA, the U.S. Trade Representative directed the Department to implement this determination.

[1] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Ecuador*, 69 FR 79613 (December 23, 2004), and accompanying Issues and Decision Memorandum; and *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Ecuador*, 70 FR 5156 (February 1, 2005).

Nature of the Proceedings

Section 129 of the URAA governs the nature and effect of determinations issued by the Department to implement findings by WTO dispute settlement panels and the Appellate Body. Specifically, section 129(b)(2) provides that ''notwithstanding any provision of the Tariff Act of 1930,'' within 180 days of a written request from the U.S. Trade Representative, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body. *See* 19 USC 3538(b)(2). The Statement of Administrative Action, URAA, H. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), variously refers to such a determination by the Department as a ''new,'' ''second,'' and ''different'' determination. *See* SAA at 1025, 1027. After consulting with the Department and the appropriate congressional committees, the U.S. Trade Representative may direct the Department to implement, in whole or in part, the new determination made under section 129. *See* 19 USC 3538(b)(4). Pursuant to section 129(c), the new determination shall apply with respect to unliquidated entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date on which the U.S. Trade Representative directs the Department to implement the new determination. *See* 19 USC 3538(c). The new determination is subject to judicial review separate and apart from judicial review of the Department's original determination. *See* 19 USC 1516a(a)(2)(B)(vii).

Analysis of Comments Received

The issues raised in the case and rebuttal briefs submitted by interested parties to this proceeding are addressed in the Issues and Decision Memorandum for the Final Results of Proceeding Under Section 129 of the Uruguay Round Agreements Act (URAA): Antidumping Measures on Frozen Warmwater Shrimp from Ecuador from Stephen J. Claeys to David M. Spooner, dated July 26, 2007 (Issues and Decision Memorandum), which is hereby adopted by this notice. The Issues and Decision Memorandum is on file in the Central Records Unit (CRU), room B–099 of the Department of Commerce main building and can be accessed directly at *http://ia.ita.doc.gov/download/section129/ecuador–shrimp__sec129–final–072607.pdf* . The paper copy and electronic version of the Issues and Decision Memorandum are identical in content. A list of the issues addressed in the Issues and Decision Memorandum is appended to this notice.

Final Antidumping Margins

The recalculated margins, unchanged from the preliminary results, are as follows:

- The margin for Exporklore, S.A., decreases from 2.48 percent to zero.
- The margin for Promarisco, S.A. decreases from 4.42 percent to *de minimis*.
- Expalsa, S.A. was excluded from the order and that does not change as a result of this proceeding.
- Because there are no above *de minimis* margins remaining, the all–others rate is based on a simple average of the zero and *de minimis* margins. Therefore, the all–others rate changes from 3.58 percent to *de minimis*.
- As a result of the recalculations, all of the margins are either zero or *de minimis*. Accordingly, we are now revoking this order effective August 15, 2007 (the effective date).

Revocation of the Antidumping Duty Order

On August 15, 2007, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA, the U.S. Trade Representative, after consulting with the Department and Congress, directed the Department to implement this determination. We will instruct U.S. Customs and Border Protection to liquidate without regard to antidumping duties entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 15, 2007 (the effective date), and to discontinue collection of cash deposits of antidumping duties.

This determination is issued and published in accordance with section 129(c)(2)(A) of the URAA.

Dated: August 17, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

Appendix I

Issued Raised in the Issues and Decision Memorandum

Comment 1: Whether the Department Has Authority to, and Should, Issue a Determination Pursuant to section 129 of the URAA

Comment 2: Whether the Preliminary Results Are Consistent with U.S. Law

Comment 3: Calculation Methodology

Comment 4: Scope of the Proceeding

[FR Doc. E7–16686 Filed 8–22–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North Carolina State University; Notice of Decision on Application for Duty–Free Entry of Scientific Instrument

This decision is pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L.106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 2104, U.S. Department of Commerce, 14th and Constitution Ave, NW., Washington, DC.

Comments: None received. Decision: Approved. Potential domestic manufacturers declined to bid on producing the scientific instrument. No domestic instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, was being manufactured in the United States at the time of its order.

Docket Number: 07–001. Applicant: North Carolina State University. Instrument: Cryogen–Free Magnetic System. Manufacturer: Cryogenic Limited, UK. Intended Use: See notice at 71 FR 4895, January 30, 2006 (Comparable case). Reasons: The foreign instrument, the first of its kind, provides complete superconducting magnet operation in a cryogen–free mode using a dilution refrigerator and a persistent superconducting switch which provides long–term magnetic field stability of at least 1 ppm/hr and can maintain the sample in the millikelvin range. Domestic magnets operating in cryogen–free mode do not provide long term field stability better than 10ppm/hr, nor do they offer a devoted cryo–cooler and cryogen–free dewar, thus providing a room temperature bore. Three potential domestic manufacturers of similar equipment declined to bid.

Dated: August 20, 2007.

Faye Robinson,

Director, Statutory Import Programs Staff Import Administration.

[FR Doc. E7–16692 Filed 8–22–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of Georgia, et al.; Notice of Consolidated Decision on Applications for Duty–Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational,

Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2104, U.S. Department of Commerce, 14th and Constitution Avenue., NW., Washington, DC.

Docket Number: 07–041. Applicant: University of Georgia. Instrument: Electron Microscope, Model Inspect F. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 72 FR 41495, July 30, 2007.

Docket Number: 07–045. Applicant: Florida Fish and Wildlife Research Institute. Instrument: Electron Microscope, Model JEM–1400. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 72 FR 41495, July 30, 2007.

Docket Number: 07–046. Applicant: Howard Hughes Medical Institute. Instrument: Electron Microscope, Model Tecnai G2 20 TWIN. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 72 FR 41495, July 30, 2007.

Docket Number: 07–048. Applicant: The University of Michigan. Instrument: Electron Microscope. Manufacturer: Delong Instruments, Czech Republic. Intended Use: See notice at 72 FR 41495, July 30, 2007.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: August 20, 2007.

Faye Robinson,

Director, Statutory Import Programs Staff Import Administration.

[FR Doc. E7–16687 Filed 8–22–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of Arizona; Notice of Consolidated Decision on Applications for Duty–Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L.106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2104, U.S. Department of Commerce, 14th and Constitution Ave, NW., Washington, DC.

Comments: None received. Decision: Approved. We know of no instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, that was being manufactured in the United States at the time of its order.

Docket Number: 07–042. Applicant: University of Arizona, Department of Physics, Tucson, AZ. Instrument: Low Temperature Ultra–high Vacuum Scanning Tunneling Microscope. Manufacturer: Omicron NanoTechnology GmbH, Germany. Intended Use: See notice at 72 CFR 41495, July 30, 2007. Reasons: The instrument must provide a temperature at the sample down to 5 K, cool down time to 5 K as low as 6 hours, with 15 hours between refills, Z–resolution to 0.01 nm and achievable vacuum to 10 to the 11th mbar with guaranteed atomic resolution in constant current and constant height on Au(111).

Faye Robinson,

Director, Statutory Import Programs Staff Import Administration.

[FR Doc. E7–16688 Filed 8–22–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC01

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the South Atlantic States; Amendment 16; Correction

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

ACTION: Notice of intent (NOI) to prepare a draft environmental impact statement (DEIS); correction.

SUMMARY: This document contains a correction to the NOI to prepare a DEIS for Amendment 16 to the Snapper-Grouper Fishery Management Plan of the South Atlantic Region, that was published in the **Federal Register** Wednesday, August 15, 2007.

DATES: Written comments on the scope of issues to be addressed in the DEIS will be accepted through September 17, 2007.

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

SUPPLEMENTARY INFORMATION: The NOI that is the subject of this correction was published Wednesday, August 15, 2007 (72 FR 45739). The NOI contains an error in the **DATES** section regarding the acceptable end date to submit written comments on the NOI. The error has been corrected in the **DATES** section in this document. All other information remains unchanged and will not be repeated in this correction.

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

Dated: August 17, 2007.

James P. Burgess,

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

[FR Doc. 07–4133 Filed 8–20–07; 1:44 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XC18

Gulf of Mexico Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene Public Hearings on Reef Fish Amendment 30A and Scoping Amendment 29.

DATES: The public meetings will held from September 10 - 18, 2007 at 10 locations throughout the Gulf of Mexico. For specific dates and times see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The public meetings will be held in the following locations: St. Petersburg, Ft. Myers, Marathon and

Panama City, FL; Biloxi, MS; Gulf Shores, AL; New Orleans, LA; Galveston, Palacios and Corpus Christi, TX. For specific dates and times see **SUPPLEMENTARY INFORMATION.**

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Frank S. Kennedy, Fishery Biologist; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) has scheduled a series of public hearings and scoping meetings to receive comments on Draft Amendment 30A and a scoping document for Amendment 29 to the Reef Fish Fishery Management Plan. Amendment 30A contains potential management measures to modify the rebuilding plan for greater amberjack and to establish a rebuilding plan for gray triggerfish in order to end overfishing and rebuild the stocks of both species. These measures would reduce the directed greater amberjack harvest by 32 percent and reduce harvest of gray triggerfish by 49 percent. Amendment 30A also contains management measures that consider re-allocation of the greater amberjack and gray triggerfish resources between commercial and recreational fishers and accountability measures to ensure compliance with the rebuilding plans. Amendment 29 will rationalize effort and reduce overcapacity in the commercial grouper fishery.

The public hearings will begin at 6 p.m. with Amendment 30A will be followed by the scoping hearing for Amendment 29. Public testimony will conclude no later than 10 p.m. at each of the following locations:

Monday, September 10, 2007, W Hotel, 333 Poydras St., New Orleans, LA 70130, telephone: (504) 525–9444;

Monday, September 10, 2007, Wingate Inn, 12009 Indian River Rd., Biloxi, MS 39540, telephone: (228) 396–0036;

Tuesday, September 11, 2007, Courtyard by Marriott, 3750 Gulf Shores Pkwy., Gulf Shores, AL 36542, telephone: (251) 968–1113;

Tuesday, September 11, 2007, Holiday Inn, 5002 Seawall Blvd, Galveston, TX 77551, telephone: (409) 740–3581;

Wednesday, September 12, 2007, Edgewater Beach Resort, 11212 Front Beach Road Panama City, FL 32407, telephone: (800) 331–6338;

Wednesday, September 12, 2007, Palacios Recreational Center, 2401 Perryman, Palacios, TX 77465, telephone: (361) 972–2387;

Thursday, September 13, 2007, Holiday Inn Emerald Beach, 1102 S. Shoreline Blvd., Corpus Christi, TX 78401, telephone: (361) 883–5731.

Monday, September 17, 2007, Radisson Hotel, 12600 Roosevelt Blvd., St. Petersburg, FL 33716, telephone: (727) 572–7800;

Tuesday, September 18, 2007, Sombrero Cay Club Resort, 19 Sombrero Blvd., Marathon, FL 33050, telephone: (305) 743–2250;

Wednesday, September 19, 2007, Clarion Hotel, 12635 S. Cleveland Ave., Ft. Myers, FL 33907, telephone: (239) 936–4300.

Copies of the Amendments can be obtained by calling the Council office at (813) 348–1630. 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: August 17, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–16618 Filed 8–22–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XC17

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 Pacific Fishery Management Council's (Council) Groundfish Allocation Committee (GAC) will hold a working meeting, which is open to the public.

DATES: The GAC meeting will be held Tuesday, September 25, 2007, from 8:30 a.m. until business for the day is completed. The GAC will reconvene Wednesday, September 26, 2007, and Thursday, September 27 at 8:30 a.m. each day until their business is completed.

ADDRESSES: The GAC meeting will be held at the Pacific Fishery Management Council, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384. telephone: (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Management Coordinator; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the GAC meeting is to consider draft alternatives, preliminary analyses, and other material for rationalizing the Pacific Coast limited entry groundfish trawl industry (trawl rationalization), and for allocating Pacific Coast groundfish stocks and stock complexes to the various Pacific Coast fishery sectors (intersector allocation). Trawl rationalization issues will be discussed by the GAC on Tuesday and Wednesday, September, 25–26; and intersector allocation issues will be discussed on Thursday, September 27. No management actions will be decided by the GAC. The GAC's role will be development of recommendations and refinement of draft alternatives for analysis in two contemplated environmental impact statements. The GAC recommendations will be provided for consideration by the Council at its November 2007 meeting in San Diego, CA.

Although non-emergency issues not contained in the meeting agenda may come before the GAC for discussion, those issues may not be the subject of formal GAC action during this meeting. GAC 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 305) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GAC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: August 17, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–16617 Filed 8–22–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XC19

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet September 9–14, 2007. The Council meeting will begin on Monday, September 10, at 2 p.m., reconvening each day through Friday, September 14. All meetings are open to the public, except a closed session will be held from 2 p.m. until 3 p.m. on Monday, September 10 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Doubletree Hotel Portland Lloyd Center, 1000 NE Multnomah Street, Portland, OR 97232; telephone: (503) 281–6111.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks and Introductions
2. Swearing in of New Member
3. Roll Call
4. Executive Director's Report
5. Approve Agenda

B. Administrative Matters

1. Future Council Meeting Agenda Planning
2. West Coast Governors' Agreement on Ocean Health
3. Magnuson-Stevens Act Reauthorization Implementation
4. Legislative Matters
5. Fiscal Matters
6. Appointments to Advisory Bodies, Standing Committees, and Other Forums, and Changes to Council Operating Procedures as Needed
7. Approval of Council Meeting Minutes
8. Council Three-Meeting Outlook, November 2007 Council Meeting Agenda, and Workload Priorities

C. Open Public Comment

Comments on Non-Agenda Items

D. EnforcementState Enforcement Activity Report

E. Habitat

Current Habitat Issues

F. Highly Migratory Species Management

1. National Marine Fisheries Service Report
2. High Seas Limited Entry Longline Fishery
3. Yellowfin Tuna Overfishing
4. North Pacific Albacore Tuna Stock Assessment

G. Groundfish Management

1. National Marine Fisheries Service Report
2. Off-Year Science Improvements
3. Consideration of Inseason Adjustments
4. Stock Assessments for 2009–2010 Groundfish Fisheries
5. Amendment 15: Participation Limitation in the Pacific Whiting Fishery
6. Final Consideration of Inseason Adjustments (if Needed)

H. Pacific Halibut Management

1. Proposed Changes to Catch Sharing Plan and 2008 Annual Regulations
2. Pacific Halibut Bycatch Estimate for International Pacific Halibut Commission Adoption
3. Pacific Halibut Stock Assessment

I. Salmon Management

1. Salmon Methodology Review
2. Klamath River Fall Chinook Overfishing Assessment Progress Report

SCHEDULE OF ANCILLARY MEETINGS

Sunday, September 9, 2007	
Scientific and Statistical Committee	
Economic Subcommittee	1 p.m.
Monday, September 10, 2007	
Council Secretariat	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Budget Committee	8:30 a.m.
Habitat Committee	8:30 a.m.
Legislative Committee	10 a.m.
Enforcement Consultants	4:30 p.m.
Groundfish Stock Assessment Question and Answer Session	7 p.m.
Tuesday, September 11, 2007	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Enforcement Consultants	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Wednesday, September 12, 2007	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.

SCHEDULE OF ANCILLARY MEETINGS—Continued

Washington State Delegation	7 a.m.
Enforcement Consultants	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Olympic Coast National Marine Sanctuary	
Marine Habitat Research Report	7 p.m.
Thursday, September 13, 2007	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As needed.
Friday, September 14, 2007	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Enforcement Consultants	As needed.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council 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 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are 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: August 17, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–16625 Filed 8–22–07; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Petition of the Chicago Mercantile Exchange Inc. for Exemptive Relief, Pursuant to Section 4(c) of the Commodity Exchange Act, From the Requirement That the China Foreign Exchange Trade System and National Interbank Funding Center or Its Members Register as Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed order and request for comment.

SUMMARY: The Chicago Mercantile Exchange Inc. (CME) has petitioned the Commodity Futures Trading Commission (Commission) for exemptive relief, pursuant to section 4(c) of the Commodity Exchange Act (Act or CEA), from the requirement that the China Foreign Exchange Trade System and National Interbank Funding Center (CFETS) or its members register as futures commission merchants (FCMs). The Commission seeks comment on CME's petition. Copies of the petition are available for inspection at the Office of the Secretariat by mail at the address listed below, by telephoning (202) 418–5100, or on the Commission's Web site (*http://www.cftc.gov*).

DATES: Comments must be received on or before September 24, 2007.

ADDRESSES: Comments should be sent to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5521, or by e-mail to *secretary@cftc.gov.* Reference should be made to ''CME Petition for Exemption from FCM Registration on Behalf of CFETS.'' Comments may also be submitted by connecting to the Federal eRulemaking Portal at *http://www.regulations.gov* and following the comment submission instructions. Comments will be published on the Commission's Web site.

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Associate Director, (202) 418–5092, *rwasserman@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

By petition dated July 27, 2007 (Petition), CME applied for an exemption, pursuant to section 4(c) of the Act, 7 U.S.C. 6(c), from the requirement (pursuant to section 4d of the Act, 7 U.S.C. 6d) that CFETS or its members register as FCMs.

According to the Petition, CFETS is a non-profit affiliate of the People's Bank of China (PBC). CFETS operates an electronic trading system with respect to trading in the interbank foreign exchange market, Renminbi (RMB) lending, and trading on the bond market in China. The foreign currencies traded against the RMB through CFETS include the U.S. dollar, Japanese yen, Euro, and Hong Kong dollar, and CFETS provides trading services for foreign exchange spot, forwards, and swaps. CFETS also operates China's interbank RMB money

market and facilitates the trading of government securities and repo transactions. CFETS has over 270 members engaged in foreign exchange trading, including all of the major Chinese banks. CFETS members also include insurance and securities companies, fund management companies, and foreign financial institutions.

CME and CFETS have entered into an agreement pursuant to which CFETS will become a ''super-clearing'' member of CME authorized to clear foreign currency and interest rate futures transactions on behalf of CFETS members and their customers domiciled in China. Although CFETS members include non-Chinese financial institutions, only those of its members (and their customers) that are domiciled in China would be permitted to clear CME contracts through CFETS under the agreement. Pursuant to the agreement, CME will, among other things, provide consulting services and technical assistance to CFETS. In addition, CME and CFETS will cooperate to complete both a comprehensive training program and a marketing program. Under the arrangement, CFETS' compliance with CME operational procedures will not be enforced via regulatory processes applicable to other clearing members, but instead under the terms of the agreement.

As a clearing member of CME, CFETS would fall within the FCM definition of section 1a(20) of the Act, 7 U.S.C. 1a(20), in that it would ''accept[] orders for the purchase or sale of [a] commodity for future delivery on or subject to the rules of [a] contract market * * * and * * * in or in connection with such * * * acceptance of orders, [would] accept[] * * * money, securities, or property * * * to margin, guarantee, or secure * * * trades or contracts that * * * result therefrom.'' While the Commission and its predecessor agencies have not applied the FCM registration requirement to foreign brokers [1] that clear through U.S. FCMs, Commission staff have stated that the FCM registration requirement of Section 4d(a)(1) of the Act, 7 U.S.C. 6d(a)(1), applies to foreign brokers that clear directly through a U.S.-based clearinghouse,[2] as CFETS will under the proposed arrangement with CME.

CME states that, given CFETS' status as an entity that is not separately capitalized, ''CFETS itself will not be in a position to provide net capital information to CME. Therefore, CFETS cannot meet the requirements that would apply if it were required to register as an FCM.'' [3] CME further states that, in light of CFETS' existing business environment, CFETS is currently unable to establish a capitalized subsidiary in the U.S. that could otherwise meet the requirements applicable to registered FCMs. Consequently, CME is seeking an exemption, pursuant to section 4(c) of the Act, 7 U.S.C. 6(c), on behalf of CFETS, from the FCM registration requirement. CME is also seeking relief from any FCM registration requirement that might apply to CFETS members.

Section 4(c)(1) of the Act, 7 U.S.C. 6(c)(1), empowers the Commission to ''promote responsible economic or financial innovation and fair competition'' by exempting any transaction or class of transactions, including any person offering or entering into such transaction, from any of the provisions of the CEA (subject to exceptions not relevant here) where the Commission determines that the exemption would be consistent with the public interest.[4]

The Petition includes, among other things, the following conditions that could be included in any order granting an exemption to CFETS pursuant to section 4(c), § 6(c):

- CFETS shall be required to comply with financial requirements that substitute for those applicable to CME's clearing members. Specifically, CFETS shall be required to satisfy CME's security deposit requirement, which is currently a minimum of $500,000. CFETS shall be required to maintain ''surrogate capital'' [5] of 8% of aggregate required customer performance bond, but in any case, no less than $10 million. All such surrogate capital shall be required to be held in the form of U.S. dollars or Treasury securities (subject to any haircuts required by Regulation 1.17) in a CME-controlled account in the U.S.
- CME shall be required to provide the Commission a monthly report detailing surrogate capital amounts and calculation (which report, or portions thereof, would be published on the Commission's Web site). CME shall be required to provide next-day notice to the Commission if: (i) Surrogate capital falls below 110% of the requirement; or (ii) if a customer margin call exceeds excess surrogate capital on deposit.[6]

[1] In this context, ''foreign broker'' means any person located outside the U.S., its territories, or possessions who is engaged in soliciting or in accepting orders only from persons located outside the U.S., its territories, or possessions for the purchase or sale of any commodity interest transaction on or subject to the rules of any designated contract market or derivatives execution facility and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. *See Exemption From Registration for Certain Foreign Persons,* 72 FR 15,637 (Apr. 2, 2007) (proposing to revise and redesignate a definition for the term ''foreign broker'').

[2] The Commission has recently proposed to codify its longstanding view that a foreign broker is not required to register if the foreign broker: (1) Limits its customers to foreign customers; (2) submits the trades of such foreign customers that are entered into on U.S. markets for clearing on an omnibus basis through a registered FCM; and (3) does not solicit or accept orders from U.S. customers for trading on U.S. markets. *See supra* note 1; *see also* CFTC Staff Letter 89–07, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,479 at 36,096–97 (June 22, 1989) (''The Commission has not required a person located outside the United States which engages in the conduct described in section 2(a)(1)(A) of [the Act] for or on behalf of foreign customers through a U.S. FCM to register as an FCM''). In the proposal, the Commission specifically noted that, by limiting exemptive relief in the past to activities conducted ''though a U.S. FCM'' ''staff did not extend the exemptive relief available to a foreign broker to include the submission of trades executed for its customer and non-customer accounts directly to a clearing organization for a U.S. market.'' *See* 72 FR at 15,638.

[3] Petition, at 3.

[4] Section 4(c)(1) of the Act, 7 U.S.C. 6(c)(1), provides that:

In order to promote responsible economic or financial innovation and fair competition, the Commission by * * * order, after notice and opportunity for hearing, may (* * * on application of any person, including any board of trade designated or registered as a contract market * * *) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) of this section (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods * * * from any * * * provision of this chapter (except subparagraphs (C)(ii) and (D) of section 2(a)(1) of this title, except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title), if the Commission determines that the exemption would be consistent with the public interest.

While Section 4(c)(2) of the Act, 7 U.S.C. 6(c)(2), imposes additional requirements with respect to any exemption from the requirements of Section 4(a) of the Act, 7 U.S.C. 6(a), CME is not seeking such relief.

[5] If the Commission were to grant CFETS' request for relief, CFETS would not be required to meet the minimum capital requirements of Regulation 1.17. *See* Regulation 1.17, 17 CFR 1.17 (minimum capital requirements applicable to persons ''registered as a futures commission merchant''). ''Surrogate capital'' refers to alternative minimum capital requirements that CME represents that CFETS would be required to meet that are intended to parallel, in effect, the minimum capital requirements of Regulation 1.17. These requirements may be imposed on CFETS as conditions of a Commission order pursuant to Section 4(c)(1), 6(c)(1).

[6] For example, if CFETS had a surrogate capital requirement of $10 million, it would be required to maintain surrogate capital of $11 million (110% of the requirement) in a CME-controlled account in

Continued

CME shall be required to provide the Commission immediate notice of any deficiency in surrogate capital.

• CME and CFETS shall be required to provide all large-trader reporting information at the same time and in the same format that CFETS would be required to provide if CFETS were registered as an FCM. CME and CFETS shall be required to act as agent for service of process regarding trading on CME for both CFETS members and customers of CFETS members.

• CME shall not hold CFETS positions and associated funds in U.S. customer accounts segregated pursuant to section 4d of the Act, 7 U.S.C. 6d.

• CME and CFETS shall be required to maintain records, in English, in the U.S., sufficient to permit the Commission to confirm compliance with any provision of any order issued by the Commission. CME and CFETS shall be required to make such records available to the Commission in the U.S. within 72 hours of any request.

• CME and CFETS shall be required to comply with U.S. anti-money laundering requirements as determined by the U.S. Treasury.

• CME and CFETS shall be required to accept joint and several liability in any Commission enforcement action relating to compliance with any order issued by the Commission.

• CME and CFETS shall be required to file a report with the Commission providing statistics and analyzing issues (to be determined) within 18 months after issuance of any relief.

II. Request for Comments

The Commission requests public comment on any aspect of the Petition that commenters believe may raise issues under the CEA or Commission regulations. In particular, the Commission invites comment regarding: (1) Whether the proposed exemption is consistent with the requirements for relief set forth in section 4(c) of the Act, 7 U.S.C. 6(c), including whether granting the exemption would be consistent with the public interest and the purposes of the CEA; (2) whether CME's representations, as discussed above, if imposed as conditions of an order pursuant to section 4(c)(1), section 6(c)(1), would provide adequate safeguards with respect to the U.S. clearing system in light of CFETS' exemption from the FCM registration requirement; (3) whether an order granting the request for relief should include requirements different from or in addition to those discussed above; (4) whether an order granting the request for relief should exclude any one or more of the requirements discussed above; (5) any material adverse effects that granting the petition would have upon other derivatives clearing organizations, exchanges, or other Commission registrants from a competitive [7] or other perspective [8]; and (6) any other issues relevant to this petition.

Issued in Washington, DC, on August 8, 2007 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E7–16641 Filed 8–22–07; 8:45 am]

BILLING CODE 6351–01–P

order to avoid providing the Commission with next-day notice of its surrogate capital on deposit.

[7] As noted above, the Commission may grant an exemption pursuant to Section 4(c)(1) of the Act, 7 U.S.C. 6(c)(1), ''[i]n order to promote responsible economic or financial innovation and fair competition.'' Section 15(b) of the Act, 7 U.S.C. 19(b), provides that the ''Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this chapter, as well as the policies and purposes of this chapter, in issuing any order * * *.''

[8] The Commission notes that Section 15(a) of the Act, 7 U.S.C. 19(a), requires that the Commission, before issuing an order, consider the costs and benefits in light of considerations of protection of market participants and the public; considerations of the efficiency, competitiveness, and financial integrity of futures markets; considerations of price discovery; considerations of sound risk management practices; and other public interest considerations.

COMMODITY FUTURES TRADING COMMISSION

Fees for Reviews of the Rule Enforcement Programs of Contract Markets and Registered Futures Associations

AGENCY: Commodity Futures Trading Commission.

ACTION: Establish the FY 2007 schedule of fees.

SUMMARY: The Commission charges fees to designated contract markets and registered futures associations to recover the costs incurred by the Commission in the operation of its program of oversight of self-regulatory organization (SRO) rule enforcement programs (17 CFR part 1 Appendix B) (National Futures Association (NFA), a registered futures association, and the contract markets are referred to as SROs). The calculation of the fee amounts to be charged for FY 2007 is based upon an average of actual program costs incurred during FY 2004, 2005, and 2006, as explained below. The FY 2007 fee schedule is set forth in the **SUPPLEMENTARY INFORMATION**. Electronic payment of fees is required.

DATES: *Effective Dates:* The FY 2007 fees for Commission oversight of each SRO rule enforcement program must be paid by each of the named SROs in the amount specified by no later than October 22, 2007.

FOR FURTHER INFORMATION CONTACT: Stacy Dean Yochum, Counsel to the Executive Director, Commodity Futures Trading Commission, (202) 418–5160, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. For information on electronic payment, contact Adrienne Young-Burgess, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5196.

SUPPLEMENTARY INFORMATION:

I. General

This notice relates to fees for the Commission's review of the rule enforcement programs at the registered futures associations [1] and designated contract markets (DCM), which are referred to as SROs, regulated by the Commission.

II. Schedule of Fees

Fees for the Commission's review of the rule enforcement programs at the registered futures associations and DCMs regulated by the Commission:

Entity	Fee amount
Chicago Board of Trade	$72,547
Chicago Mercantile Exchange	97,725
New York Mercantile Exchange	59,604
Kansas City Board of Trade	10,799
New York Board of Trade	57,273
Minneapolis Grain Exchange	10,967
HedgeStreet	2,736
One Chicago	18,355
Chicago Climate Futures Exchange	1,731
EUREX	2,523
National Futures Association	273,854
Total	608,114

III. Background Information

A. General

The Commission recalculates the fees charged each year with the intention of recovering the costs of operating this Commission program.[2] All costs are accounted for by the Commission's Management Accounting Structure Codes (MASC) system, which records each employee's time for each pay period. The fees are set each year based

[1] NFA is the only registered futures association.

[2] See Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a and 31 U.S.C. 9701. For a broader discussion of the history of Commission Fees, see 52 FR 46070 (Dec. 4, 1987).

on direct program costs, plus an overhead factor.

B. Overhead Rate

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide overhead direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs consist generally of the following Commission-wide costs: Indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 109 percent for fiscal year 2004, 109 percent for fiscal year 2005, and 109 percent for fiscal year 2006. These overhead rates are applied to the direct labor costs to calculate the costs of oversight of SRO rule enforcement programs.

C. Conduct of SRO Rule Enforcement Reviews

Under the formula adopted in 1993 (58 FR 42643, Aug. 11, 1993), which appears at 17 CFR Part 1 Appendix B, the Commission calculates the fee to recover the costs of its rule enforcement review and examinations, based on the three-year average of the actual cost of performing such reviews and examinations at each SRO. The cost of operation of the Commission's SRO oversight program varies from SRO to SRO, according to the size and complexity of each SRO's program. The three-year averaging computation method is intended to smooth out year-to-year variations in cost. Timing of the Commission's reviews and examinations may affect costs-a review or examination may span two fiscal years and reviews and examinations are not conducted at each SRO each year. Adjustments to actual costs may be made to relieve the burden on an SRO with a disproportionately large share of program costs.

The Commission's formula provides for a reduction in the assessed fee if an SRO has a smaller percentage of United States industry contract volume than its percentage of overall Commission oversight program costs. This adjustment reduces the costs so that, as a percentage of total Commission SRO oversight program costs, they are in line with the pro rata percentage for that SRO of United States industry-wide contract volume.

The calculation made is as follows: The fee required to be paid to the Commission by each DCM is equal to the lesser of actual costs based on the three-year historical average of costs for that DCM or one-half of average costs incurred by the Commission for each DCM for the most recent three years, plus a pro rata share (based on average trading volume for the most recent three years) of the aggregate of average annual costs of all DCMs for the most recent three years. The formula for calculating the second factor is: 0.5a + 0.5 vt = current fee. In this formula, ''a'' equals the average annual costs, ''v'' equals the percentage of total volume across DCMs over the last three years, and ''t'' equals the average annual costs for all DCMs. NFA has no contracts traded; hence, its fee is based simply on costs for the most recent three fiscal years.

This table summarizes the data used in the calculations and the resulting fee for each entity:

	3-year average actual costs	3-year percent of volume (percent)	Calculated 2006 fee
Chicago Board of Trade	$72,547	34.1011	$72,547
Chicago Mercantile Exchange	97,725	52.8310	97,725
New York Mercantile Exchange	73,089	10.4640	59,604
Kansas City Board of Trade	20,685	0.2071	10,799
New York Board of Trade	106,219	1.8893	57,273
Minneapolis Grain Exchange	21,490	0.1006	10,967
HedgeStreet	5,413	0.0137	2,736
One Chicago	35,695	0.2300	18,355
Chicago Climate Futures Exchange	3,461	0.0002	1,731
EUREX	4,403	0.1460	2,523
Subtotal	440,729		334,260
National Futures Association	273,854		273,854
Total	706,718		608,114

An example of how the fee is calculated for one exchange, the Minneapolis Grain Exchange, is set forth here:

a. Actual three-year average costs equal $21,490

b. The alternative computation is:

(.5) ($21,490) + (.5) (.001006) ($) = $10,967.

c. The fee is the lesser of a or b; in this case $10,967.

As noted above, the alternative calculation based on contracts traded is not applicable to NFA because it is not a DCM and has no contracts traded. The Commission's average annual cost for conducting oversight review of the NFA rule enforcement program during fiscal years 2004 through 2006 was $273,854 (one-third of $821,561). The fee to be paid by the NFA for the current fiscal year is $273,854.

Payment Method

The Debt Collection Improvement Act (DCIA) requires deposits of fees owed to the government by electronic transfer of funds (see 31 U.S.C. 3720). For information about electronic payments, please contact Adrienne Young-Burgess at (202) 418–5196 or *aburgess@cftc.gov,* or see the CFTC Web site at *http://www.cftc.gov,* specifically, *http://www.cftc.gov/cftc/cftcelectronicpayments.htm.*

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires agencies to consider the impact of rules on small business. The fees implemented in this release affect contract markets and registered futures associations. The Commission has previously determined that contract markets and registered futures associations are not ''small entities'' for purposes of the Regulatory Flexibility Act. Accordingly, the Acting Chairman, on behalf of the Commission, certifies pursuant to 5 U.S.C. 605(b) that

the fees implemented here will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC on August 17, 2007, by the Commission.

David Stawick,

Secretary of the Commission.

[FR Doc. E7–16705 Filed 8–22–07; 8:45 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled Learn and Serve America Program and Performance Reporting System to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), (44 U.S.C. Chapter 35). A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Kimberly Spring, 202–606–6629 (*kspring@cns.gov*). Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Office for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**.

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on May 2, 2007. This comment period ended on July 2, 2007. Comments received included requests for additional directions and response options; clarification of questions on participant race and ethnicity; and the addition of questions specific to training and technical assistance activities. The collection system has been modified to address these comments.

Description: The Corporation is seeking the renewal of the Learn and Serve America Program and Performance Reporting System, also known as LASSIE. The system includes the Program and Performance Measurement Report, which is completed annually by any institution that receives Learn and Serve grant funds. The Report is administered through a web-based system and collects information on the characteristics of reporting institutions, numbers and types of program participants and program partners, service activities, and institutional supports for service-learning. There are three parallel versions of the Report to accommodate differences in terminology and institutional structure among K–12, higher education, and community-based grant recipients.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Learn and Serve America Program and Performance Reporting System.

OMB Number: 3045–0095.

Affected Public: Learn and Serve America Grantees and Subgrantees.

Number of Respondents: 2,100.

Frequency: Annually.

Average Time per Response: 1/4 hour for grantees and 1 hour for subgrantees.

Estimated Total Burden Hours: 2025.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: August 14, 2007.

Robert Grimm,

Director, Department of Research and Policy Development.

[FR Doc. E7–16689 Filed 8–22–07; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') has submitted a public information collection request (ICR) entitled the Evaluation of Youth Corps: 18-Month Follow-up Survey to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ms. Lillian Dote at (202) 606–6984. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, OMB Desk Officer for the Corporation for National and Community Service, by the following method, within 30 days from the date of publication in this **Federal Register**:

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service.

(2) Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Propose ways to enhance the quality, utility, and clarity of the information to be collected; and

• Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on May 17, 2007. This comment period ended July 16, 2007. No public comments were received from this notice.

Description: The Corporation is seeking approval of the Evaluation of Youth Corps: 18-Month Follow-up Survey, which will be used to learn about the effects of national service on youth corps participants. The information collection will be completed by individuals 18 months after they were randomly assigned to participate in either a youth corps program or a control group. These individuals completed a baseline survey at the time of application to a youth corps program.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Evaluation of Youth Corps: 18-Month Follow-up Survey.

OMB Number: None.

Agency Number: None.

Affected Public: Individuals who have agreed to participate in the evaluation and who have completed a baseline survey.

Total Respondents: 2,267.

Frequency: One time.

Average Time per Response: 45–60 minutes.

Estimated Total Burden Hours: 2,068 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: August 13, 2007.

Robert Grimm,

Director, Office of Research and Policy Development.

[FR Doc. E7–16691 Filed 8–22–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Task Force on the Future of Military Health Care

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) and 41 Code of Federal Regulations (CFR) 102–3.140 through 160, the Department of Defense announces the following committee meeting:

Name of Committee: Department of Defense Task Force on the Future of Military Health Care, a duly established subcommittee of the Defense Health Board.

Date of Meeting: September 19, 2007.

Time of Meeting:

8:30 a.m. to 8:50 a.m./Preparatory Work Meeting.

9 a.m. to 11:45 a.m./Public Hearing.

11:50 a.m. to 1 p.m./Four, concurrent Subcommittee Meeting(s).

1:15 p.m. to 4 p.m./Public Hearing.

6 p.m. to 7:30 p.m./Town Hall Public Meeting.

Place of Meeting: Founders Inn & Spa, 5641 Indian River Road, Virginia Beach, VA 23464.

Purpose of Meeting: To obtain, review, and evaluate information related to the Task Force's congressionally-directed mission to examine matters related to the future of military health care. The Task Force members will receive briefings on topics related to the delivery of military health care during the public meetings.

Agenda: Discussion topic will be key issues on the future of military health care.

Prior to the public meeting the Task Force will conduct a Preparatory Work Meeting from 8:30 a.m.–8:50 a.m. to solely analyze relevant issues and facts in preparation for the Task Force's next public meeting. In addition, the Task Force, following its public meeting, will conduct four, concurrent, Subcommittee Meetings from 11:45 a.m. to 1 p.m. to gather information, conduct research, and analyze relevant issues and facts in preparation for a future meeting of the Task Force.

The Preparatory Work Meeting will be held at the Founders Inn & Spa, and pursuant to 41 Code of Federal Regulations, § 102–3.160(a), the Preparatory Work Meeting is closed to the public. Additionally, the four, concurrent subcommittee meetings will also be held at the Founders Inn & Spa, and, pursuant to 41 CFR 102–3.35(a), 102–3.145 and 102–3.160(a), these subcommittee meetings are closed to the public.

Additional information and meeting registration is available online at the Task Force Web site: *http://www.DoDfuturehealthcare.net.*

FOR FURTHER INFORMATION CONTACT: Colonel Christine Bader, Executive Secretary, Department of Defense Task Force on the Future of Military Health Care, TMA/Code: DHS, Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, Virginia 22041–3206. (703) 681–3279, ext. 109 (*christine.bader@ha.osd.mil*).

SUPPLEMENTARY INFORMATION: Open sessions of the meeting will be limited by space accommodations. Any interested person may attend; however, seating is limited to the space available at the Founders Inn & Spa. Individuals or organizations wishing to submit written comments for consideration by the Task Force should provide their comments in an electronic (PDF Format) document through the Task Force Web site (*http://www.DoDfuturehealthcare.net*) at the ''Contact Us'' page, no later than five (5) business days prior to the scheduled meeting.

Dated: August 13, 2007.

L. M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–4142 Filed 8–21–07; 11:32 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Missile Defense Advisory Committee (MDAC); Notice of Closed Meeting

AGENCY: DoD.

ACTION: Notice of closed meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense (DoD) announces the following Federal Advisory Committee meeting.

Name of Committee: Missile Defense Advisory Committee (MDAC).

Dates of Meeting: October 11–12, 2007.

Location: 7100 Defense Pentagon, Washington, DC 20301–7100.

Time: 8 a.m. to 5 p.m.

Purpose of Meeting: At this meeting, the Committee will receive classified

briefings by MDA senior staff, Program Managers, senior DoD leaders, representatives from industry and the Services on the appropriate role for MDA in Cruise Missile Defense (CMD).

The mission of the MDAC is to provide the Department of Defense advice on all matters relating to missile defense, including system development, technology, program maturity and readiness of configurations of the Ballistic Missile Defense System to enter the acquisition process.

Proposed Agenda: Topics tentatively scheduled for discussion includes, but is not limited to administrative work; responsibilities for CMD development; current MDA CMD capabilities and responsibilities; review of governing directives; and CMD capabilities development programs for the Services.

FOR FURTHER INFORMATION CONTACT: COL Mark Zamberlan, Designated Federal Official (DFO) at *mdac@mda.mil*, phone/voice mail (703) 695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the MDAC in response to the stated agenda of the planned meeting or at any time. Written statements pertaining to a specific topic being discussed at a planned meeting of the MDAC must be submitted to the MDAC's DFO no later than seven business days prior to the meeting in question. Written statements that so not pertain to a scheduled meeting of the MDAC may be submitted at any time. All written statements should be forwarded to the DFO at the aforementioned information contact and address in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file formats: Adobe Acrobat PDF, MS Word or MS PowerPoint). The DFO will review all submitted written statements and provide copies to all the committee members.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Under Secretary of Defense (Acquisition, Logistics and Technology), in consultation with the Office of the Department of Defense General Counsel, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

Dated: August 20, 2007.

L.M. Bynum,

OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 07–4143 Filed 8–21–07; 11:33 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Missile Defense Advisory Committee (MDAC); Notice of Closed Meeting

AGENCY: DoD.

ACTION: Notice of closed meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense (DoD) announces the following Federal Advisory Committee meeting.

Name of Committee: Missile Defense Advisory Committee (MDAC).

Dates of Meeting: September 5–6, 2007.

Location: 7100 Defense Pentagon, Washington, DC 20301–7100.

Time: 8 a.m. to 5 p.m.

Purpose of Meeting: At this meeting, the Committee will receive classified briefings by MDA senior staff, Program Managers, senior DoD leaders, representatives from industry and the Services on the appropriate role for MDA in Cruise Missile Defense (CMD).

The mission of the MDAC is to provide the Department of Defense advice on all matters relating to missile defense, including system development, technology, program maturity and readiness of configurations of the Ballistic Missile Defense System to enter the acquisition process.

Proposed Agenda: Topics tentatively scheduled for discussion include, but are not limited to, administrative work; responsibilities for CMD development; current MDA CMD capabilities and responsibilities; review of governing directives; and CMD capabilities development programs for the Services.

FOR FURTHER INFORMATION CONTACT: COL Mark Zamberlan, Designated Federal Official (DFO) at *mdac@mda.mil,* phone/voice mail (703) 695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the MDAC in response to the stated agenda of the planned meeting or at any time. Written statements pertaining to a specific topic being discussed at a planned meeting of the MDAC must be submitted to the MDAC's DFO no later than seven business days prior to the meeting in question. Written statements that do not pertain to a scheduled meeting of the MDAC may be submitted at any time. All written statements should be forwarded to the DFO at the aforementioned information contact and address in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file formats: Adobe Acrobat PDF, MS Word or MS PowerPoint). The DFO will review all submitted written statements and provide copies to all the committee members.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Under Secretary of Defense (Acquisition, Logistics and Technology), in consultation with the Office of the Department of Defense General Counsel, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public, because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

Dated: August 20, 2007.

L.M. Bynum,

OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 07–4144 Filed 8–21–07; 11:34 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Federal Advisory Committee

AGENCY: DoD.

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it will renew the charter for the Department of Defense Historical Advisory Committee on January 23, 2008.

The Task Force, under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), provides independent advice and recommendations on matters regarding the professional standards, historical methodology, program priorities, liaison with professional

groups and institutions, and adequacy of resources of the various historical programs and associated activities of the Department of Defense.

The committee is comprised of the historians from the Office of the Secretary of Defense, the Offices of the Secretaries of the Army and Navy, and the Office of the Chairman of the Joint Chiefs of Staff. In addition, the committee is authorized to establish subcommittees, and it has two subcommittees that currently deal with history-related issues involving the Department of the Army and the Department of the Navy.

Committee and subcommittee members appointed by the Secretary of Defense, who are not full-time Federal officers or employees, shall serve as Special Government Employees, and all members shall be appointed on an annual basis. With the exception of travel and per diem, the committee and subcommittee members will serve without compensation.

The Department of Defense Historical Advisory Committee shall meet at the call of the committee's Designated Federal Officer, in consultation with the chairperson. The Designated Federal Officer shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee meetings and subcommittee meetings.

The committee shall be authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and other appropriate Federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered committee, and shall report all their recommendations and advice to the parent committee for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Department of Defense or any Federal officers or employees who are not committee members.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Department of Defense Historical Advisory Committee membership about the committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Department of Defense Historical Advisory Committee.

All written statements shall be submitted to the Designated Federal Officer for the Department of Defense Historical Advisory Committee, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Department of Defense Historical Advisory Committee. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Committee Management Office, 703–601–2554, extension 128.

Dated: August 17, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4145 Filed 8–21–07; 11:34 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

AGENCY: Department of the Navy, DoD.

ACTION: Notice of decision and availability.

SUMMARY: The Department of the Navy (DON), after carefully weighing the operational, scientific, technical, and environmental implications of the alternatives considered, announces its decision to employ up to four SURTASS LFA sonar systems with certain geographical restrictions and monitoring mitigation designed to reduce potential adverse effects on the marine environment. This decision, which pertains to the employment of up to four SURTASS LFA sonar systems (as originally analyzed in the Final Overseas Environmental Impact Statement and Environmental Impact Statement [FOEIS/EIS] for SURTASS LFA Sonar and augmented in the Final Supplemental Environmental Impact Statement [SEIS]), implements the preferred alternative, Alternative 2, identified in the Final SEIS for SURTASS LFA sonar.

SUPPLEMENTARY INFORMATION: The full text of the Record of Decision (ROD) is available for public viewing at *http://www.surtass-lfa-eis.com.* Single copies of the ROD will be made available upon request by contacting the SURTASS LFA Sonar SEIS Team, 4100 N. Fairfax Drive, Suite 730, Arlington, VA 22203, or e-mail: *eisteam@mindspring.com.*

Dated: August 17, 2007.

T.M. Cruz,

Lieutenant, Office of the Judge Advocate General, U.S. Navy, Administrative Law Division, Federal Register Liaison Officer.

[FR Doc. E7–16653 Filed 8–22–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing: Patent No. 7,102,665: VEHICLE UNDERBODY IMAGING SYSTEM//Patent No. 7,102,814: PERSONAL PORTABLE BLANKETS AS AN INFRARED SHIELDING DEVICE FOR FIELD ACTIVITIES//Patent No. 7,103,614: AUTOMATIC VEHICLE INFORMATION RETRIEVAL FOR USE AT ENTRY TO A SECURE SITE//Patent No. 7,113,447: LASER PUMPED COMPACT ACOUSTIC SENSOR SYSTEM//Patent No. 7,162,943: CAVITATING EXPLOSIVELY AUGMENTED WATER-JET MINE CUTTER SYSTEM//Patent No. 7,164,618: DUAL UNIT EIDETIC TOPOGRAPHER//Patent No. 7,164,787: ENHANCING TWO-DIMENSIONAL CONTRAST IMAGES RENDERED FROM THREE-DIMENSIONAL STREAK TUBE IMAGING LIDAR (STIL) DATA// Patent No. 7,164,788: ENHANCING TWO-DIMENSIONAL RANGE IMAGES RENDERED FROM THREE-DIMENSIONAL STREAK TUBE IMAGING LIDAR (STIL) DATA//Patent No. 7,203,339: ENHANCING TWO-DIMENSIONAL CONTRAST AND RANGE IMAGES RENDERED FROM

THREE DIMENSIONAL STREAK TUBE IMAGING LIDAR (STIL) DATA//Patent No. 7,213,409: RECONFIGURABLE HYDROGEN TRANSFER HEATING/ COOLING SYSTEM//Patent No. 7,213,497: INFLATABLE TRAJECTORY ALTERING AND BLAST ENERGY ABSORPTION SYSTEM// Patent No. 7,215,826: RENDERING THREE-DIMENSIONAL STREAK TUBE IMAGING LIDAR (STIL) DATA TO TWO-DIMENSIONAL CONTRAST AND RANGE MAPPINGS THEREOF//Patent No. 7,216,897: ACTIVE TORQUE REDUCTION FOR HYDRAULICALLY FILLED JOINTS//Patent No. 7,233,346: DIFFERENTIAL IMAGING METHOD AND SYSTEM// Patent No. 7,236,201: METHOD OF GENERATING AN IMAGE IN A TURBID MEDIUM.

ADDRESSES: Requests for copies of the patents cited should be directed to Office of Counsel, Naval Surface Warfare Center Panama City, 110 Vernon Ave., Panama City, FL 32407–7001.

FOR FURTHER INFORMATION CONTACT: Mr. James Shepherd, Patent Counsel, Naval Surface Warfare Center Panama City, 110 Vernon Ave., Panama City, FL 32407–7001, telephone: 850–234–4646.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: August 17, 2007.

T.M. Cruz,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–16654 Filed 8–22–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On August 16, 2007, the Department of Education published a comment period notice in the **Federal Register** (Page 46049, Column 1) for the information collection, ''Consolidation State Performance Report (CSPR).'' The Responses are 14,652, and the Burden Hours are 28,583.

The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: August 17, 2007.

Angela Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

[FR Doc. E7–16732 Filed 8–22–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On August 16, 2007, the Department of Education published a comment period notice in the **Federal Register** (Page 46068, Column 1) for the information collection, ''Federal Direct Consolidation Loan Program Application Documents.'' The Type of Review is a Revision, the Responses are 895,050, and the Burden Hours are 322,629. The Abstract is as follows: ''These forms are the means by which (1) An applicant applies for and promises to repay a Direct Consolidation Loan and (2) a loan holder verifies that a loan is eligible for consolidation.''

The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: August 17, 2007.

Angela Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

[FR Doc. E7–16734 Filed 8–22–07; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2006–0778; FRL–8459–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Industrial, Commercial and Institutional Boilers and Process Heaters (Renewal); EPA ICR Number 2028.03, OMB Control Number 2060–0551

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before September 24, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2006–0778, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 5, 2006 (71 FR 58853), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID Number EPA–HQ–OECA–2006–0778, which is available for public viewing online at *http://www.regulations.gov,* or, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket Center is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://*

www.regulations.gov, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Industrial, Commercial and Institutional Boilers and Process Heaters (Renewal).

ICR Numbers: EPA ICR Number 2028.03, OMB Control Number 2060–0551.

ICR Status: This ICR is scheduled to expire on August 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and 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: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Industrial, Commercial and Institutional Boilers and Process Heaters (40 CFR part 63, subpart DDDDD) were proposed on January 13, 2003, and promulgated on December 6, 2006.

This regulation applies to new, reconstructed, or existing industrial, commercial and institutional boilers and process heaters that are a major source of hazardous air pollutants (HAP) emissions. A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

Owners/operators of industrial, commercial and institutional boilers and process heaters facilities are required to submit initial notifications, performance tests, and periodic reports. Respondents are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Semiannual reports are also required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NESHAP.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart DDDDD, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

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 number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 86 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.

Respondents/Affected Entities: Industrial, commercial and institutional boilers and process heaters facilities.

Estimated Number of Respondents: 2,625.

Frequency of Response: Initially, semiannually and occasionally.

Estimated Total Annual Hour Burden: 513,995.

Estimated Total Costs: $74,783,461, which includes $10,780,000 annualized Capital Startup costs, $18,220,800 annualized Operations & Maintenance (O&M) costs, and $45,783,461 annualized Labor costs.

Changes in the Estimates: The number of responses subject to the standard is estimated to be 5,974. The number of responses in the previous ICR was 18,788. During the initial compliance period a large number of facilities were required to determine whether they were subject to the standard. Most were not subject and no additional reporting is required, therefore, a large reduction in the number of affected facilities occurred. There is an adjustment decrease of 636,250 hours in the total estimated burden hours as currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is not due to any program changes. The change in the burden has occurred because the initial performance tests and the initial reports for existing sources have been completed and submitted to the Agency. The relatively small number of new sources causes a small increase in burden hours. However, the net overall effect is a decrease in the number of burden hours.

There is an increase in the capital/startup and operation and maintenance (O&M) cost compared to the previous ICR. The reason for this increase is due to the fact that this renewal ICR incurred O&M costs as compared with the active ICR that included primarily capital/startup costs. There is also an increase of 289 additional new sources per year over the next three years of this ICR. The net effect is an increase in cost to the subject facilities.

Dated: August 14, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–16698 Filed 8–22–07; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 101]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank of the United States (''Ex-Im Bank'') is seeking approval of the proposed information collection described below. Ex-Im Bank provides insurance and guarantees for the financing of exports of goods and services. This collection allows our customers the convenience of online claim filing in connection with a defaulted export transaction. Its use expedites claim filing and provides for simpler, more efficient processing of insurance, guarantee, and working capital claims. As part of its continuing effort to reduce paperwork and respondent burden, Ex-Im Bank invites the general public and other Federal Agencies to comment on the proposed information collection as required by the Paperwork Reduction Act of 1995.

SUPPLEMENTARY INFORMATION: This notice is soliciting comments from the public concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the 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 information collection; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of 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.

DATES: Written comments should be received on or before September 24, 2007 to be assured of consideration.

ADDRESSES: Direct all comments to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, NEOB, Room 10202, Washington, DC 20503, (202) 395–3897. Direct all requests for information, including copies of the proposed collection of information and documentation to Terry M. Faith, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3607 or (800) 565–3946, ext. 3607, or *Terry.M.Faith@exim.gov.*

Titles and Form Numbers: Export-Import Bank of the United States Electronic Claim Filing System: Insurance: EIB 07–01A, Medium-Term Bank Guarantee: EIB 07–01B, and Working Capital Guarantee: EIB 07–01C.

OMB Number: None.

Type of Review: Regular.

Need and Use: The proposed information collection provides Ex-Im Bank with information necessary to process the filing of a claim under Ex-Im Bank's Multi-buyer Insurance Policy, Medium Term Guarantee and Working Capital Guarantee programs. The information collection enables claimants to file a claim online, thereby allowing for a simpler, more efficient process.

Affected Public: Insured parties and brokers.

	EIB 07–01A	EIB 07–01B	EIB 07–01C
Estimated annual respondents	32	10	10
Estimated time per respondent	1 hr.	1 hr.	1½ hrs.
Estimated annual burden	32 hrs.	10 hrs.	15 hrs.

Frequency of Response: One form per claim.

Dated: August 16, 2007.

Solomon Bush,

Agency Clearance Officer.

[FR Doc. 07–4122 Filed 8–22–07; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–07–73–A (Auction 73); DA 07–3415; AU Docket No. 07–157]

Auction of 700 MHz Band License Scheduled for January 16, 2008; Comment Sought on Competitive Bidding Procedures for Auction 73

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of certain 700 MHz band licenses scheduled to commence on January 16, 2008 (Auction 73). This document also seeks comments on competitive bidding procedures for Auction 73.

DATES: Comments are due on or before August 31, 2007, and reply comments are due on or before September 7, 2007.

ADDRESSES: Comments and reply comments must be identified by AU Docket No. 07–157; DA 07–3415. The Bureau requests that a copy of all comments and reply comments be submitted electronically to the following address: *auction73@fcc.gov.* In addition, comments and reply comments may be submitted by any of the following methods:

- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Bureau continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For auctions legal questions: Erik Salovaara or Scott MacKoul at (202) 418–0660. For general auction questions: Jeff Crooks at (202) 418–0660 or Lisa Stover at (717) 338–2888. *Mobility Division:* For service rules questions: Erin McGrath (legal) or Keith Harper (technical) at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 73 Comment Public Notice* released on August 17, 2007. The complete text of the *Auction 73 Comment Public Notice,* including attachments, and related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction 73 Comment Public Notice,* including attachments, and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 07–3415. The *Auction 73 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/73/.*

I. Introduction and Summary

1. The Wireless Telecommunications Bureau (Bureau) announces an auction of 1,099 licenses in the 698–806 MHz band (700 MHz Band). A complete list of licenses available is included as Attachment A of the *Auction 73 Comment Public Notice.* This auction, which is designated as Auction 73, is scheduled to commence on January 16, 2008.

2. In prior proceedings, the Commission considered the 700 MHz Band in two parts, 698–746 MHz (Lower 700 MHz Band) and 746–806 MHz (Upper 700 MHz Band). The Lower 700 MHz Band was divided into blocks A through E, and the Upper 700 MHz Band was divided into blocks A through D. The Commission previously assigned licenses for blocks C and D in the Lower 700 MHz Band and for blocks A and B in the Upper 700 MHz Band. Consequently, the remaining blocks to be licensed are the Lower 700 MHz Band A, B, and E Blocks, and the Upper 700 MHz Band C and D Blocks. As the letters identifying the blocks remaining to be licensed in the Lower and Upper 700 MHz Bands do not overlap, the *Auction 73 Comment Public Notice* refers to these blocks to be licensed as the A, B, E, C and D Blocks, without repeating the Lower 700 MHz Band and Upper 700 MHz Band designation.

3. Pursuant to governing statutes and Commission rules, the Commission will announce final procedures for Auction 73 after considering comment provided in response to the *Auction 73 Comment Public Notice.* In Auction 73, the Commission will make available 176 licenses over Economic Areas (EAs) in the A Block, 734 licenses over Cellular Market Areas (CMAs) in the B Block, 176 licenses over EAs in the E Block, 12 licenses over Regional Economic Area Groupings (REAGs) in the C Block, and one nationwide license, to be used as part of the 700 MHz Public/Private Partnership, in the D Block. The Bureau seeks comment on detailed procedures for Auction 73, including, among other things, procedures for: (1) Anonymous bidding, to enhance competition by safeguarding against potential anti-competitive auction strategies; (2) applicants trying to combine multiple C Block licenses to place bids on packages of those licenses; (3) block-specific aggregate reserve prices, to help assure that the public recovers a portion of the licenses' value; and (4) offering licenses for the relevant block(s) in a prompt subsequent auction in the event auction results do not satisfy applicable reserve prices.

4. The Commission is offering the licenses in Auction 73 consistent with the requirements of the Digital Television Transition and Public Safety Act of 2005 (DTV Act). Pursuant to the DTV Act the Commission must conduct the auction of licenses for recovered analog spectrum by commencing the bidding not later than January 28, 2008.

II. Background

5. The Commission recently released the *700 MHz Second Report and Order,* FCC 07–132, released August 6, 2007, in which it revised rules governing licenses in the 700 MHz Band and made certain determinations regarding the auction of 700 MHz Band licenses. Parties responding to this Public Notice should be familiar with the details of the *700 MHz Second Report and Order.* The Bureau now proposes and seeks comment on detailed procedures to implement the Commission's determinations and generally enable the conduct of Auction 73.

6. *Anonymous Bidding.* In the *700 MHz Second Report and Order,* the Commission found that the public interest would be served if the auction for new 700 MHz Band licenses is conducted using anonymous (or limited information) bidding procedures, regardless of any pre-auction measurement of likely auction competition. Such information procedures are intended to reduce the potential for anti-competitive bidding behavior, including bidding activity that aims to prevent the entry of new competitors. Having made this determination, the Commission directed the Bureau to propose and seek comment on more detailed procedures for employing anonymous bidding for the upcoming auction. Accordingly, the Bureau seeks comment on anonymous bidding procedures for Auction 73.

7. *Package Bidding for C Block Licenses But Not for A, B, D, and E Block Licenses.* The Commission also determined in the *700 MHz Second Report and Order* that providing for package bidding for C Block licenses in Auction 73 would serve the public interest. The Commission found that package bidding for these licenses should facilitate the entry of entities seeking to create a nationwide footprint and whose business plans require the economies of scale that only can be obtained with nationwide operation. The Commission directed the Bureau to propose and seek comment on detailed procedures for implementing package bidding for the C Block licenses and not for licenses in the other blocks to be auctioned.

8. *Block-Specific Aggregate Reserve Prices for Auction 73.* The Commission also decided to provide for aggregate reserve prices for licenses authorizing the use of each block of the 700 MHz Band. The Commission concluded that, consistent with its statutory mandate, disclosed reserve prices would promote the recovery of a portion of the value of the public spectrum resource. The Commission directed the Bureau to adopt aggregate reserve prices reflecting the potential market value of this spectrum based on a variety of factors including, but not limited to, the characteristics of this band and the auction prices of other recently auctioned licenses, such as licenses for Advanced Wireless Services in the 1710–1755 MHz and 2110–2155 MHz bands (AWS–1). Accordingly, the Bureau proposes to adopt the following block-specific aggregate reserve prices: Block A, $1.807380 billion; Block B, $1.374426 billion; Block C, $4.637854 billion; Block D, $1.330000 billion; Block E, $0.903690 billion. Further, the

Bureau proposes that if the sum of the provisionally winning gross bids for the licenses in a block does not satisfy the relevant aggregate reserve price, none of the relevant licenses for the particular block will be assigned based on the auction results.

9. *Prompt Subsequent Auction, if Necessary, of Alternative Licenses.* The Commission, moreover, decided that if licenses initially offered for the A, B, C, or E Blocks are not assigned because the auction results do not satisfy the applicable aggregate reserve price(s) for those licenses, the Commission promptly will offer alternative licenses for those blocks. More specifically, the Commission will offer licenses for the A, B, and E Blocks subject to alternative performance requirements. With respect to the C Block, the Commission will offer alternative licenses without the open platform conditions and based on different geographic areas and spectrum bandwidth. If the D Block license is not assigned because the auction results do not satisfy the D Block reserve price, the Commission may re-offer that license subject to the same rules or reconsider the applicable rules. Consistent with the Commission's direction, the Bureau will permit only qualified bidders in the initial auction to participate in the subsequent auction and proposes to use the same auction design, including an aggregate reserve price for each block that matches the applicable initial reserve price, insofar as possible.

III. Licenses To Be Offered in Auction 73

10. Auction 73 includes a total of 1,099 licenses: 176 in the A Block, 734 in the B Block, 176 in the E Block, 12 in the C Block, and 1 in the D Block.

Block	Frequencies (MHz)	Bandwidth	Pairing	Area type	Licenses
A	698–704, 728–734	12 MHz	2 × 6 MHz	EA	176
B	704–710, 734–740	12 MHz	2 × 6 MHz	CMA	734
E	722–728	6 MHz	unpaired	EA	176
C	746–757, 776–787	22 MHz	2 × 11 MHz	REAG	12
D	758–763, 788–793	10 MHz	2 × 5 MHz	Nationwide	1

The D Block is subject to conditions respecting a public/private partnership license.

11. *Predefined Packages of C Block Licenses.* As directed by the Commission's recent decision in the *700 MHz Second Report and Order,* the Bureau proposes detailed procedures that will enable bidders to place bids on all individual licenses and on certain predefined packages of C Block licenses. More specifically, the Bureau proposes to enable bidders to place individual bids on the 12 REAG licenses and package bids on the following combinations of C Block REAG licenses: REAGs 1–8, comprising the 50 United States; REAGs 9 and 11, comprising the United States Pacific territories; and REAGs 10 and 12, comprising Puerto Rico, the U.S. Virgin Islands and the Gulf of Mexico.

12. *Incumbents.* A number of incumbent broadcasters are licensed and operating on these frequencies (TV Channels 52–53, 56–58, 60–62, and 65–67) and adjacent channels. In accordance with the Commission's rules, 700 MHz Band licensees must protect analog TV incumbents from harmful interference through February 17, 2009, the end of the DTV transition period. These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to some parts of their geographic license areas.

13. In the *700 MHz Second Report and Order,* the Commission grandfathered an incumbent Guard Band B Block licensee in Major Economic Areas (MEAs) 21 and 39 at 761–763 MHz and 791–793 MHz of the D Block. The new D Block licensee will be authorized on a secondary basis in these markets, and it may not cause interference to the primary operations of the grandfathered licensee. If the grandfathered licensee, or a successor or assignee, cancels either of the grandfathered licenses, or if either license cancels automatically, is terminated by the Commission, or expires, then the licensed geographic area will revert to the D Block licensee automatically.

IV. Bureau Seeks Comment on Auction Procedures

14. Section 309(j)(3) of the Communications Act of 1934, as amended, requires the Commission to ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed before issuance of bidding rules, to permit notice and comment on proposed auction procedures. Consistent with the provisions of section 309(j)(3) and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues relating to Auction 73.

A. Auction Design

i. Anonymous Bidding

15. In the *700 MHz Second Report and Order,* the Commission concluded that anonymous bidding procedures, which withhold from public release until after the auction closes any information that may indicate specific applicants' interests in the auction, including information such as their license selections and bidding activity, should be implemented in the upcoming auction of new 700 MHz Band licenses regardless of whether the auction meets a pre-auction assessment of likely competition. The Commission concluded that such procedures will serve the public interest by reducing the potential for anti-competitive bidding behavior, including bidding activity that aims to prevent the entry of new competitors.

16. In light of these conclusions, for Auction 73 the Bureau proposes to withhold, until after the close of bidding, public release of: (1) Bidders' license selections on their short-form applications (FCC Form 175); (2) the amounts of bidders' upfront payments and bidding eligibility; and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. For example, the Bureau proposes to withhold the identities of bidders placing specific bids or withdrawals and the net bid amounts, although the Bureau will disclose after the close of each round the amount of every bid placed and whether a bid amount was withdrawn. The Bureau proposes to provide individual bidders with additional information about their own bids. In contrast to procedures implemented for anonymous bidding in past auctions, and consistent with the *700 MHz Second Report and Order,* the Bureau will withhold this information irrespective of any pre-auction

measurement of likely auction competition. Accordingly, the Bureau proposes to withhold the amount of bidders' upfront payments and bidding eligibility until after the close of bidding. Bidders will be able to view their own level of eligibility, before and during the auction, through the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). Moreover, bidders will be made aware of other bidders with whom they will not be permitted to discuss bidding strategies for the purpose of complying with the Commission's anti-collusion rules. Specifically, the Bureau will notify separately each applicant with short-form applications for participation in a pending auction, including but not limited to Auction 73, whether applicants in Auction 73 have applied for licenses in any of the same geographic areas as that applicant.

17. In the event that licenses initially offered for any of the 700 MHz Band spectrum blocks are not assigned because the auction results do not satisfy the applicable reserve price and the Commission conducts a prompt subsequent auction of licenses for the relevant block(s), the Commission proposes generally to withhold the information described herein on bidder license selection and eligibility and information that may reveal the identities of bidders placing bids for both auctions until after the close of bidding in the second auction. Thus, if the initial auction results satisfy aggregate reserve prices with respect to licenses in some but not all blocks, the Commission proposes, except for the D Block, to withhold information on the winning bidders for licenses in the relevant block(s) as well as information on bidder license selections and eligibility and information that may reveal the identities of bidders placing bids and taking other bidding-related actions on licenses in all blocks until after the close of bidding in both auctions. Because bidding on the 700 MHz Band licenses is interrelated, the purpose for which the Bureau imposes anonymous bidding procedures in the first place—to make signaling and other anti-competitive bidding behavior less likely to be successful—will continue to be served by not making such information public until after the close of bidding on all of the licenses. For the D Block, however, the Bureau proposes, instead of withholding all information, to make public before the close of bidding in a second auction only such information as may be necessary to proceed with promptly facilitating the D Block winner's obligations to negotiate a Network Sharing Agreement with the national Public Safety Broadband Licensee in the adjacent spectrum block, in the event there is a winning bidder for the D Block license in the initial auction. The Bureau seeks comment on these details regarding its proposal for implementation of anonymous bidding in Auction 73, and on alternative proposals for the specific procedures to implement anonymous bidding.

ii. SMR Auction With Package Bidding on C Block Licenses

18. In the *700 MHz Second Report and Order,* the Commission directed the Bureau to propose detailed auction procedures that would permit the license-by-license bidding of the FCC's standard simultaneous multiple round (SMR) auction format for the A, B, D, and E Block licenses, while enabling package bidding for C Block licenses. Accordingly, the Bureau proposes to conduct Auction 73 using an SMR auction design with hierarchical package bidding (HPB) for the C Block licenses. The Bureau has developed software for an auction format (SMR–HPB) that permits license-by-license bidding as well as limited package bidding using HPB on predetermined packages of specified licenses. Under this proposal, HPB will be available for 12 licenses in the C Block, and license-by-license bidding without package bids will be available for the 1,087 licenses in the other available blocks. In this SMR–HPB auction format the Bureau proposes for the C Block licenses certain procedures that differ from standard SMR procedures, while retaining the standard SMR procedures for all of the other licenses to be offered. The Bureau seeks comment on the details of the proposed SMR–HPB format, keeping in mind the Commission's goal of facilitating the entry of a new nationwide competitor with sufficient bandwidth to offer a range of advanced wireless services, without causing undue difficulty for bidders that are not interested in a nationwide license.

19. In the *700 MHz Second Report and Order,* the Commission also provided that the Bureau may conduct an auction without package bidding for the C Block licenses in the event that currently unforeseen difficulties make it impracticable to implement package bidding. In the event that package bidding cannot be implemented for Auction 73, the Bureau proposes to conduct the auction using standard SMR procedures for all of the licenses, including the C Block licenses as well as the A, B, D, and E Block licenses.

a. Previous Commission Package Bidding Designs

20. The Bureau's proposed SMR–HPB auction design further develops and modifies prior package bidding designs for the Commission's spectrum license auctions. Unlike previous designs that allowed bidders to create their own packages of any or all of the licenses in the auction, SMR–HPB allows a form of package bidding only on predetermined packages of specified licenses, while using SMR procedures for licenses not subject to package bidding. The Commission first proposed a simple form of package bidding in 2000, in connection with procedures for a planned auction of licenses in the Upper 700 MHz Band (Auction 31). These package bidding procedures were modified in 2002 when Auction 31 was scheduled to begin on June 19, 2002. After Auction 31 was postponed consistent with the Auction Reform Act of 2002, the Commission further modified its package bidding design. This package bidding design was used for an auction of narrowband Personal Communication Services licenses (Auction 51) in September 2003. Following Auction 51, the Commission continued to consider alternative package bidding auction formats and developed a particular SMR auction format with package bidding (SMR–PB). In 2006, the Commission sought comment on whether to use SMR–PB and/or SMR for Auction 66, and decided to use its SMR auction format without package bidding for all of the licenses in that auction. In 2005 and 2006 the Commission conducted experimental economic testing of the SMR–PB format.

21. The Commission has received considerable feedback on auction design from potential bidders and other members of the public, including comments submitted in the 700 MHz proceeding. Also, in 2007 the Commission did further experimental economic testing on alternative package bidding designs. Furthermore, there has been a significant amount of recent academic research and economic experiments on auction designs that incorporate package bidding in various ways. Taking into consideration Commission experience and input from the public, the Commission now seeks comment on using the following SMR–HPB format for Auction 73.

b. SMR–HPB Auction Format

22. As in the Commission's non-package bidding SMR auctions, the proposed SMR–HPB auction format offers all licenses for sale

simultaneously, with bid amounts generally ascending over a series of bidding rounds. SMR–HPB allows bids on all individual licenses and on certain predefined packages of specified licenses. In Auction 73, not all licenses will be included in packages: The Commission will offer package bidding only on the C Block licenses. Bidding on licenses in other blocks will be on a license-by-license basis only, as in SMR. A bidder may bid on, and potentially win, any number of licenses and/or packages. Typically, bidding remains open on all licenses until bidding stops on every license, based on the applicable stopping rule.

23. With respect to licenses offered subject to HPB, bidders may not create their own packages. The predefined packages are determined by the Commission according to a hierarchical structure. The initial level consists of individual licenses, and the next level consists of non-overlapping packages of those licenses, such that a given license is included only once in each level. The winning set of bids may consist of bids from various levels, as long as each license is included in only one winning bid.

24. For Auction 73, the Bureau proposes to accept individual bids on C Block licenses for REAGs 1–12 (Level 1) and package bids on certain combinations of C Block REAG licenses (Level 2). Thus, the initial level will be the twelve individual REAG licenses, and the second level will consist of packages of REAGs 1–8 (the 50 United States), REAGs 10 and 12 (Puerto Rico, the U.S. Virgin Islands and the Gulf of Mexico, or Atlantic), and REAGs 9 and 11 (the U.S. Pacific territories, or Pacific). The Bureau proposes a package of REAGs covering the 50 states consistent with the Commission's determination that the Bureau should implement a package bidding auction design to facilitate the entry of a new nationwide competitor in the C Block. The Bureau seeks comment on this proposal, including comments suggesting alternative levels or alternative ways of packaging licenses within levels.

25. After each round, the FCC determines the combination of package and/or single license bids that yields the highest gross amount, and those bids become provisionally winning. For licenses that are not subject to package bidding, the FCC Auction System will consider the bids placed in the round and the provisionally winning bids from the previous round; the highest bid on each license will become that round's provisionally winning bid. For licenses subject to package bidding, when determining provisionally winning bids, the FCC Auction System will consider each bidder's highest bid on each license or package placed up to that point in the auction, regardless of whether the bids were provisionally winning after the rounds in which they were placed. Considering these bids from previous rounds makes it possible for new bids on individual licenses to combine with other bids in order to compete with bids on packages. The provisionally winning bids are determined by comparing aggregate gross bid amounts, at each level, for various combinations of package and individual license bids.

B. Auction Structure

i. Round Structure

26. Auction 73 will consist of sequential bidding rounds. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction.

27. The Commission will conduct Auction 73 over the Internet, and telephonic bidding will be available as well. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders.

28. The Bureau proposes to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureau may change the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureau seeks comment on this proposal. Commenters may wish to address the role of the bidding schedule in managing the pace of the auction and the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

ii. Stopping Rule

29. The Bureau has discretion to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time. For Auction 73, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses and packages after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids. Thus, unless the Bureau announces alternative stopping procedures, bidding will remain open on all licenses until bidding stops on every license, regardless of whether bids are placed on individual licenses or packages of licenses. Consequently, it is not possible to determine in advance how long the auction will last.

30. Further, the Bureau proposes to retain the discretion to exercise any of the following options during Auction 73: (a) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on any license or package for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license or a package of licenses for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. When commenting on this proposal, commenters should address whether this modified stopping rule should apply across licenses and packages of those licenses. For example, should the auction close if the only bid placed is a new bid on a license that is part of a package upon which that same bidder holds the provisionally winning bid? Commenters should also address whether this modified stopping rule should apply only after applicable reserve prices have been met; (b) declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) after which the auction will close; and (c) keep the auction open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

31. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely, e.g., before bidders have had an adequate opportunity to satisfy any applicable reserve prices. Before

exercising certain of these options, the Bureau is likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or changing minimum acceptable bids. The Bureau proposes to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureau seeks comment on these proposals.

iii. Information Relating to Auction Delay, Suspension, or Cancellation

32. For Auction 73, the Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

C. Bidding Procedures

i. Upfront Payments and Bidding Eligibility

33. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned. A bidder's upfront payment is a refundable deposit to establish eligibility to bid on licenses. Upfront payments related to the licenses for specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind, the Bureau proposes to calculate upfront payments on a license-by-license basis using a method that considers the likely relative demand for the licenses, taking into account, among other factors, the population within the license area, the bandwidth covered by the license, whether the license includes rural areas, and whether a license for the exact same area was unsold in Auction 66. Specifically, the Bureau proposes to calculate upfront payments as follows: (1) For licenses covering CMAs in the 50 states in which the licenses offered in Auction 66 were sold, $0.05 per MHz per population (MHz-pop) for Metropolitan Statistical Area (MSA) licenses and $0.03/MHz-pop for Rural Service Area (RSA) licenses; (2) for licenses covering EAs in the 50 states in which the corresponding licenses in both EA blocks offered in Auction 66 were sold, the sum of $0.05/MHz-pop for counties contained within an MSA and $0.03/MHz-pop for counties contained within an RSA; (3) for licenses covering REAGs in the 50 states in which the corresponding licenses in all three REAG blocks offered in Auction 66 were sold, the sum of $0.05/MHz-pop for counties contained within an MSA and $0.03/MHz-pop for counties contained within an RSA; (4) for licenses covering geographic areas for which an Auction 66 license was unsold, $0.01/MHz-pop; (5) for licenses covering the Gulf of Mexico, $1,000 per MHz; and (6) for all remaining licenses, $0.01/MHz-pop. For all licenses, the results of the calculations are subject to a minimum of $500 per license and are rounded using the Bureau's standard rounding procedure. The proposed number of bidding units for each license and associated upfront payment amounts are listed in Attachment A of the *Auction 73 Comment Public Notice*. The Bureau seeks comment on this proposal.

34. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the bidder's initial bidding eligibility in bidding units. The Bureau proposes that each license be assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction 73 Comment Public Notice*, on a bidding unit per dollar basis. For a package, the Bureau proposes to calculate the bidding units by adding together the bidding units of the individual licenses that make up the package. The number of bidding units for a given license is fixed and does not change during the auction as prices change. A bidder's upfront payment is not attributed to specific licenses or packages. Rather, a bidder may place bids on any of the licenses it selected on its application to participate in the auction as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease.

35. In the proposed SMR–HPB auction format, a bidder may place bids on any combination of licenses and packages of licenses as long as the total number of bidding units associated with the licenses does not exceed the bidder's current eligibility. Therefore, applicants interested in bidding only on individual licenses should determine the total number of bidding units associated with licenses they wish to bid on or have included in provisionally winning bids in any single round, and submit an upfront payment amount covering that total number of bidding units. Applicants interested in bidding on packages should determine their upfront payment by calculating the sum of bidding units associated with each discrete license they wish to include in new bids (package or individual bids) or have included in provisionally winning bids in any single round. The bidding units associated with a given license, even if the license is included in more than one bid, will be counted only once per bidder per round. Hence, if a bidder has enough eligibility to bid on certain licenses, it can place bids on the licenses individually *and* on packages containing the licenses without needing additional eligibility. For example, if licenses A, B, and C each have 10,000 bidding units, and a bidder wishes in a single round to be able to bid on licenses A, B, and C individually and on packages AB and ABC, the bidder needs 30,000 bidding units of eligibility.

ii. Activity Rule

36. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating.

37. In the proposed SMR–HPB format, as well as in an SMR format, bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

38. The Bureau proposes to divide the auction into at least two stages, each characterized by a different activity requirement. The auction will start in Stage One. The Bureau proposes to advance the auction to the next stage by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of auction activity, including but not limited to the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue. The

Bureau seeks comment on these proposals.

39. Commenters that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules. Additionally, commenters may wish to address the role of activity rules in managing the pace of the auction and the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

40. In SMR and SMR–HPB, a bidder's activity in a round will be the sum of the bidding units associated with any licenses covered by new and provisionally winning bids. In SMR–HPB, the bidding units associated with a given license will be counted only once in a bidder's activity calculation for the round, even if the bidder places multiple bids including the license. For example, consider two licenses, A and B, each having 10,000 bidding units. Assuming a bidder bids on license A as well as the package AB in a given round, the bidder's activity would be 20,000 bidding units, calculated as the sum of the bidding units of licenses A and B. Note that the bidding units for license A are not counted twice.

41. The Bureau proposes the following activity requirements, while noting again that the Bureau retains the discretion to change stages unilaterally by announcement during the auction. *Stage One:* In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-fourths (5/4). *Stage Two:* In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths (20/19).

42. The Bureau retains the discretion to change the activity requirements during the auction. For example, the Bureau could decide to add an additional stage with a higher activity requirement, not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 95 percent proposed herein. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System.

iii. Activity Rule Waivers and Reducing Eligibility

43. Use of an activity rule waiver preserves the bidder's eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding, not to particular licenses. Activity rule waivers can be either proactive or automatic and are principally a mechanism for bidders to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from bidding in a particular round.

44. The FCC Auction System assumes that a bidder not meeting the activity requirement would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) The bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

45. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rule. Reducing eligibility is an irreversible action. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

46. Under the proposed simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot apply a proactive waiver after bidding in a round, and applying a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

47. Consistent with recent auctions of commercial wireless spectrum, the Bureau proposes that each bidder in Auction 73 be provided with three activity rule waivers that may be used as set forth herein at the bidder's discretion during the course of the auction. The Bureau seeks comment on this proposal.

iv. Reserve Prices or Minimum Opening Bids

a. Reserve Prices

48. In the *700 MHz Second Report and Order*, the Commission concluded that establishing separate aggregate reserve prices for all the licenses in each block of the 700 MHz Band spectrum to be offered in Auction 73 will serve the public interest. More specifically, the Commission directed the Bureau to adopt and publicly disclose block-specific aggregate reserve prices, pursuant to its existing delegated authority and the regular pre-auction process and consistent with the Commission's conclusions in the *700 MHz Second Report and Order*. The Bureau proposes that the sum of the provisionally winning gross bids for all licenses in each block must equal or exceed the disclosed aggregate reserve price for the block before the Commission will assign licenses in that block. For reasons discussed herein, the Bureau proposes to adopt the following block-specific aggregate reserve prices to be used pursuant to this proposal: Block A, $1.807380 billion; Block B, $1.374426 billion; Block C, $4.637854 billion; Block D, $1.330000 billion; Block E, $0.903690 billion. The Bureau seeks comment on all aspects of this proposal, as well as comment on other proposals for implementing the

Commission's direction in the *700 MHz Second Report and Order*.

49. *Background*. Section 309(j) calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid amount when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid amount is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid amount and/or reserve price prior to the start of each auction. If a reserve price is adopted, it may be disclosed or undisclosed.

50. The Commission is statutorily obliged to consider and balance a variety of public interests and objectives when establishing service rules and licensing procedures with respect to the public spectrum resource. These objectives include promoting recovery for the public of a portion of the value of that resource. In the *700 MHz Second Report and Order*, the Commission adopted innovative provisions with respect to licenses in each separate block of the 700 MHz Band, including provisions establishing a public/private partnership with respect to the D Block license, open platform requirements for licenses in the C Block, and geographic performance requirements with respect to licenses in the A, B, and E Blocks. To address the possibility that various factors, including but not limited to the innovative service rules adopted for 700 MHz Band licenses, might impact the recovery of a portion of the value of the public spectrum resource, the Commission concluded that the public interest requires that the auction of the licenses be subject to certain reserve prices.

51. The Commission further recognized that, given the array of different conditions imposed on the licenses for different blocks, bidders may place sufficient value on licenses in a particular block to satisfy a reserve applicable to that block even though interest in licenses in another block may be too low to satisfy the latter block's aggregate reserve. The Commission therefore concluded that block-specific aggregate reserve prices should be used and directed the Bureau to adopt auction procedures that will enable licensing of specific blocks provided that the auction results satisfy the block-specific reserve prices. In this regard, the Commission expressly noted that under procedures typical of Commission auctions, a bidder would be able to raise its own provisionally winning bid(s) to attempt to satisfy the reserve price for licenses in any spectrum block.

52. The Commission concluded that, in order to recover an appropriate portion of the value of the public spectrum resource, the block-specific aggregate reserve prices should reflect current assessments of the potential market value of licenses for the 700 MHz Band. The Commission directed that this assessment be based on various factors including, but not limited to, the characteristics of this band and the value of other recently auctioned licenses, such as licenses for Advanced Wireless Services. The Commission reasoned that using AWS–1 auction results might be an appropriate guide for setting block-specific reserve prices reflecting a conservative estimate of final market value. For instance, spectrum in the 700 MHz Band possesses superior propagation characteristics to AWS–1 spectrum. In addition, as of February 18, 2009, the 700 MHz Band spectrum will be unencumbered, while full access to AWS–1 spectrum requires the relocation of both Government and commercial incumbent users. Thus, other factors aside, 700 MHz Band licenses with comparable geographic service areas and bandwidth should have a higher market value than AWS–1 licenses.

53. The Commission expressly noted that the detailed rules regarding the D Block license, the D Block licensee's required construction of a network to be shared by public safety service users, and the resulting limitations on the flexibility of the D Block licensee, should be given weight in assessing the D Block's potential market value. Based solely on geographic area and spectrum block size, AWS–1 auction results might suggest a D Block reserve price of $1.7 billion. However, in light of the D Block license conditions essential to the public safety purpose of the public/private partnership, it might be appropriate to expect bidders to bid only about 75 percent to 80 percent of such an amount, or about $1.33 billion. In addition, when determining relative valuation of other blocks, the Bureau should consider the relative valuation of differing blocks in the recent auction of AWS–1 licenses.

54. *Discussion*. The Commission directed the Bureau to establish block-specific reserve prices by taking into account a conservative estimate of market value based on auction results for AWS–1 spectrum licenses, as noted herein and in the *700 MHz Second Report and Order*, as well as various factors including, but not limited to, the characteristics of this band. Using AWS–1 auction results as a guide, the sum of block-specific reserves would amount to about $10.4 billion. The Commission also provided specific guidance in setting the reserve applicable to the D Block license, suggesting that an amount of approximately $1.33 billion would be appropriate. Consistent with the guidance of the Commission, the Bureau proposes the following block-specific aggregate reserve prices for Auction 73: Block A, $1.807380 billion; Block B, $1.374426 billion; Block C, $4.637854 billion; Block D, $1.330000 billion; Block E, $0.903690 billion. Together, these block-specific aggregate reserves sum to $10.053350 billion.

55. As the Commission has already noted, the D Block reserve price of $1.33 billion is discounted from an amount based more closely on AWS–1 bids because of the unique service rules and related obligations imposed upon the D Block licensee. For the A, B, C, and E Blocks, the Bureau bases the reserve prices on the respective market value estimates using AWS–1 bids, adding one percent, and rounding to the nearest thousand dollars. Because of the value-enhancing propagation characteristics and relatively unencumbered nature of the 700 MHz Band spectrum, the Bureau believes these are conservative estimates. The Bureau seeks comment on these proposed reserve prices and specifically on whether any or all of them should be higher or lower than proposed here.

56. The Bureau proposes to consider gross bid amounts rather than net bid amounts in determining whether the block-specific reserve prices have been met. Anonymous bidding procedures, which the Bureau proposes to apply in Auction 73 at Commission direction, preclude disclosing net bid amounts until after the close of bidding. Therefore, were the block-specific reserve prices to be set in net rather than gross terms, during the auction bidders and the public would be less able to monitor whether provisionally winning bids had met the applicable reserve prices.

b. Minimum Opening Bids

57. In contrast to a reserve price, a minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids will be accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

58. In light of Section 309(j)'s requirement to prescribe methods for establishing reasonable minimum opening bid amounts for licenses subject to auction unless such bid amounts are not in the public interest, the Bureau proposes to establish minimum opening bid amounts for Auction 73. The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process.

59. Specifically, for Auction 73, the Bureau proposes to calculate minimum opening bid amounts on a license-by-license basis using a method that takes into consideration, among other factors, the winning bids for AWS–1 licenses in Auction 66. This approach for Auction 73 minimum opening bid amounts draws on the Auction 66 prices that were bid on licenses for the exact same geographic areas. This approach makes it possible to establish somewhat higher minimum opening bids for licenses that may likely sell for relatively higher prices, thereby potentially reducing the number of bidding rounds necessary for licenses to reach their final auction prices. Specifically, the Bureau proposes to calculate minimum opening bid amounts as follows: (1) For licenses covering geographic areas in the 50 states for which all of the corresponding licenses offered in Auction 66 for the exact same geographic area were sold, 25 percent of the dollars per MHz per population (MHz-pop) of the net amounts of the Auction 66 winning bids for licenses covering the same geographic license area, subject to a minimum of $0.03/MHz-pop; (2) for licenses covering geographic areas for which a corresponding Auction 66 license was unsold, $0.01/MHz-pop; (3) for licenses covering the Gulf of Mexico, $1,000 per MHz; and (4) for all remaining licenses, $0.01/MHz-pop. For all licenses, the results of these calculations are subject to a minimum of $500 per license and are rounded using the Bureau's standard rounding procedure. The Bureau proposes to calculate the minimum opening bid for any package as the sum of the minimum opening bids for the licenses in the package. The proposed minimum opening bid amount for each license available in Auction 73 is set forth in Attachment A of the *Auction 73 Comment Public Notice.* The Bureau seeks comment on this proposal.

60. If commenters believe that these minimum opening bid amounts will result in unsold licenses or are not reasonable amounts, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested amounts or formulas. In establishing minimum opening bid amounts, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, the availability of technology to provide service, the size of the service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the licenses being auctioned. The Bureau also seeks comment on whether, consistent with section 309(j), the public interest would be served by having no minimum opening bid amounts or higher minimum opening bid amounts. Furthermore, commenters may wish to comment on whether, given the proposed block-specific aggregate reserve prices, it would be desirable to have different minimum opening bid formulas for different blocks. For example, higher minimum opening bids could reduce the number of rounds it takes for block-specific aggregate reserve prices to be met. Commenters may also wish to address the general role of minimum opening bids in managing the pace of the auction. Would it be preferable for auction pace to be controlled by minimum opening bids—for example, by setting higher minimum opening bids to reduce the number of rounds it takes licenses to reach their final prices—or through other means such as changes to bidding schedules or activity requirements?

v. Bid Amounts

61. The Bureau proposes that, in each round, eligible bidders be able to place a bid on a given license or package using one or more pre-defined bid amounts. Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each license or package.

62. *Minimum Acceptable Bids.* The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid on the license or on a package that includes the license. The minimum acceptable bid amount for a package will be the sum of the minimum acceptable bid amounts for the licenses in the package. Minimum acceptable bids are calculated based on current price estimates and an activity-based formula.

63. *Current Price Estimates.* After there is a provisionally winning bid covering a license, the FCC Auction System will determine a current price estimate (CPE) for each license in each round as a basis for calculating minimum acceptable bids. For non-C Block licenses the CPE is the provisionally winning bid amount, so that minimum acceptable bids are based on provisionally winning bid amounts, as in a standard SMR auction without package bidding. For licenses in the C Block subject to HPB, if a bid on an individual license is provisionally winning, the CPE for that license is the provisionally winning bid amount. If a package bid is provisionally winning, CPEs for individual licenses in the package are constructed by scaling up the bids on individual licenses so that the sum of the license CPEs equals the provisionally winning package bid. Bids are scaled up by adding shares to the highest bid received so far in the auction for each license in the package. These shares are proportional to the bidding units associated with each license relative to the total number of bidding units in the package. If, contrary to the proposal here, there are multiple levels of packages, license bids may need to have additional shares added in order to scale up to the package bids at higher levels of aggregation. The mechanism for determining CPEs in an SMR–HPB auction format is described in more detail in Attachment C of the *Auction 73 Comment Public Notice.*

64. *Activity-Based Formula.* Once CPEs are calculated, minimum acceptable bids are then determined for each license as the amount of the CPE plus a percentage of the CPE. The percentage is calculated using the activity-based formula described herein. In general, the percentage will be higher when many bidders are bidding on a license, or on a package containing a license, than when few bidders are bidding on a license.

65. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount is calculated based on an activity index at the end of each round. The activity index is a weighted average of (a) The number of distinct bidders placing a bid on the license, including package bids, in that round, and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid covering the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the

CPE amount to obtain the minimum acceptable bid for the next round. The Bureau proposes initially to set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.2 (20%). Hence, at these initial settings, the minimum acceptable bid for a license will be between ten percent and twenty percent higher than the CPE (which, for non-C Block licenses not subject to HPB, will equal the provisionally winning bid), depending upon the bidding activity covering the license. Equations and examples are shown in Attachment B of the *Auction 73 Comment Public Notice.*

66. *Additional Bid Amounts.* Any additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage—more specifically, by multiplying the minimum acceptable bid by one plus successively higher multiples of the bid increment percentage. If, for example, the bid increment percentage is ten percent, the calculation of the first additional acceptable bid amount is (minimum acceptable bid amount) * (1 + 0.1), or (minimum acceptable bid amount) * 1.1; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, or (minimum acceptable bid amount) * 1.2, etc. The Bureau will round the results of these calculations and the minimum acceptable bid calculations using the Bureau's standard rounding procedures. The Bureau proposes initially to set the bid increment percentage at 0.1.

67. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

68. For Auction 73, for non-C Block licenses, the Bureau proposes to begin the auction with one acceptable bid amount per license (the minimum acceptable bid amount). For C Block licenses subject to HPB, the Bureau proposes to begin the auction with three acceptable bid amounts per license (the minimum acceptable bid amount and two additional bid amounts) and one acceptable bid amount per package (the minimum acceptable bid amount and no additional bid amounts). While the Commission typically has provided for up to a total of nine acceptable bid amounts, the Bureau departs from past procedure because its experience indicates that other methods for controlling the pace of the auction (for example, changing the minimum and maximum percentages in the activity-based minimum acceptable bid formula described herein, or increasing the number of bidding rounds per day) are more effective in that regard.

69. The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if it determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license and package-by-package basis. The Bureau also retains the discretion to limit: (a) The amount by which a minimum acceptable bid for a license may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureau could set a $10 million limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if the activity-based formula calculates a minimum acceptable bid amount that is $20 million higher than the provisionally winning bid on a license, the minimum acceptable bid amount would instead be capped at $10 million above the provisionally winning bid. The Bureau seeks comment on the circumstances under which it should employ such a limit, factors the Bureau should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing parameters of the activity-based formula, such as changing the minimum percentage. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System.

70. The Bureau seeks comment on these proposals. If commenters disagree with the Bureau's proposal to begin the auction with one acceptable bid amount per most licenses and per package, they should suggest an alternative number of acceptable bid amounts to use at the beginning of the auction, an alternative number to use later in the auction, and whether the same number of bid amounts should be used for both licenses and packages. Commenters may wish to address the role of the minimum acceptable bids and the number of acceptable bid amounts in managing the pace of the auction and the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means. Given the proposed block-specific aggregate reserve prices, commenters may wish to address the desirability of setting bid amount parameters such that the reserve prices may be met more quickly, or whether it would be preferable to constrain bid amounts such that prices rise more slowly.

vi. Provisionally Winning Bids

71. After each round of bidding, the FCC Auction System determines which combination of bids together provides the greatest aggregate gross amount and is therefore provisionally winning. If the auction were to close at the end of that round, the provisionally winning bids would become final winning bids, provided that applicable reserve prices had been met. For the 1,087 licenses not subject to package bidding, the FCC Auction System determines a provisionally winning bid for each license based on the highest bid amount received for the license, taking into account the bids placed in the round and the provisionally winning bids from the previous round. For licenses in the C Block subject to HPB, the FCC Auction System will determine which combination of individual and package bids yields the highest aggregate gross bid amount, taking into consideration each bidder's highest bid on each license or package submitted up to that point in the auction. These bids become the provisionally winning bids for the round.

72. In order to determine which combination of bids on licenses and/or packages yields the highest aggregate bid amount in a HPB auction, the FCC Auction System compares aggregate bid amounts across the various levels in a recursive process. It first compares, for each package in the second level, the sum of the highest individual license bids from the first level with the highest bids on packages in the second level containing those licenses. If the Bureau decides to include more than two levels, for each package in any subsequent level, the FCC Auction System would compare the highest bid on the package with the highest combination of bids from previous levels corresponding to licenses in that package. Those bids that generate the maximum total bid amounts become provisionally winning. Attachment C of the *Auction 73 Comment Public Notice* provides additional detail on this procedure.

73. For licenses subject to package bidding in SMR–HPB, the FCC Auction System considers each bidder's highest bid on each license or package when determining the provisionally winning bids. Consequently, for licenses in the C Block, an individual license or package bid that does not become a provisionally winning bid at the conclusion of the round in which it was placed may

become a provisionally winning bid at the conclusion of a subsequent round. This may occur even if the bidder does not have the bidding eligibility to cover the newly-provisionally winning bid. This contrasts with the SMR procedure used for licenses not subject to package bidding, in which only provisionally winning bids from the previous round and bids placed during the round are considered when determining provisionally winning bids.

74. The Bureau proposes procedures to permit bidders on C Block licenses or packages to drop from consideration a limited number of non-provisionally winning bids on such licenses and/or packages. However, provisionally winning bids for licenses subject to package bidding cannot be withdrawn, as discussed herein.

75. If more than one set of bids generates the same highest aggregate gross bid amount (i.e., the sets of bids are tied), the FCC Auction System will break ties randomly. Specifically, the FCC Auction System will assign a random number to each license in each bid upon submission. In the event of ties among bids that generate the highest aggregate gross bid amount, the set of bids with the highest sum of random numbers becomes provisionally winning. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidders would be those that placed the provisionally winning bids.

76. The set of provisionally winning bids is determined after every round in which new bids are submitted or provisionally winning bids are withdrawn, if applicable. As stated herein, the provisionally winning bids at the end of the auction become winning bids provided that applicable reserve prices have been met.

vii. Bid Removal

77. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing bids a bidder may effectively unsubmit any bid placed within that round. Once a round closes, a bidder may no longer remove a bid. In contrast to the bid withdrawal provisions described herein, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. The Bureau seeks comment on these bid removal procedures.

viii. Bid Withdrawal and Dropped Bids

78. *Bid Withdrawals.* The Commission has previously found that, in certain circumstances, allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of backup strategies as information becomes available during the course of an auction. The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons and should, therefore, be subject to bid withdrawal payment provisions. Moreover, the Commission gave the Bureau discretion in managing the auction to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

79. Applying this reasoning to Auction 73, the Bureau proposes to allow a limited number of bid withdrawals under certain circumstances. Specifically, bidders will be allowed to withdraw their provisionally winning bids on licenses not subject to package bidding (i.e., all licenses except C Block), but in no more than two rounds of the auction. The two rounds in which a bidder may withdraw provisionally winning bids will be at the bidder's discretion. Otherwise, withdrawals must be in accordance with the Commission's rules. Under this proposal, there is no limit on the number of provisionally winning bids that a bidder may withdraw in either of the rounds in which it withdraws bids. After a provisionally winning bid for a license is withdrawn, the minimum acceptable bid for the license will be set to the next highest bid on the license, and the license will revert to the FCC (i.e., there will not be a provisionally winning bidder on the license).

80. With respect to licenses subject to package bidding (i.e., the C Block), bidders have the option of placing bids on certain predetermined packages of licenses, thereby reducing their risk of winning some, but not all, of the licenses in those packages. While the predetermined packages may not coincide with the all or nothing aggregation needs of all bidders, the hierarchical packages should significantly reduce the overall exposure risk in the auction that bidders will win only some of the licenses in a desired set. Therefore, to the extent that package bids allow bidders to avoid such risk, withdrawals are less useful to bidders.

81. At the same time, withdrawals by one bidder on licenses subject to package bidding can be more disruptive to the bidding strategies of others than withdrawals on licenses not subject to package bidding. Whether a bid on a license not subject to package bidding becomes provisionally winning depends only upon whether it is the highest bid submitted for the license and, in the case of ties, on its random number assignment. In contrast, whether a bid becomes provisionally winning on a license subject to package bidding depends in part upon the particular configuration of bids submitted by other bidders that cover the same license. Consequently, a withdrawn bid on a license subject to package bidding has the potential to alter the composition of the provisionally winning bids, and may adversely affect other bidders.

82. Therefore, because the potential benefits to bidders from being able to withdraw bids are likely to be lower, and because the potential harms to other bidders from withdrawn bids are potentially much greater, the Bureau proposes to permit withdrawals only on licenses not subject to package bidding.

83. *Dropped Bids.* With respect to the C Block licenses, since HPB considers bids made in previous rounds when determining provisionally winning bids, it is possible that a bid for a package or a license subject to package bidding can become provisionally winning many rounds after it was placed. These non-provisionally winning bids are useful to the auction since they enhance the ability of bidders interested in single licenses or smaller packages to combine their bids with the bids of others to compete with a large package bid, and they provide stability to the process for determining current price estimates. It may be the case, however, that a bidder wishes to focus on alternative licenses instead, and no longer wishes to win one of its previous bids. In order to allow bidders to opt out of non-provisionally winning considered bids that they no longer wish to win, the Bureau proposes that under HPB, for licenses subject to package bidding, bidders be allowed a limited number of opportunities to drop non-provisionally winning bids from further consideration in the auction.

84. Eliminating non-provisionally winning bids from consideration may affect the current price estimates of other licenses, thereby affecting other bidders. This ability to affect the bids of other bidders may lead to undesirable strategic use of dropped bids. Therefore, the Bureau proposes to permit bidders to drop non-provisionally winning bids on packages and on licenses subject to package bidding in no more than one round of the auction. To discourage bidders from dropping bids in order to

disadvantage their competitors the Bureau also proposes the following restrictions on the circumstances under which bids may be dropped and on the bidder's subsequent bidding activity: (1) A bidder that is a provisionally winning bidder on a package will not be permitted to drop bids on licenses or sub-packages that are included in the package; (2) a bidder that drops its bids on a license or package will not be permitted to submit further bids on that particular license or package during the auction; and (3) a bidder that drops its bids on a license or package will not be permitted to submit any bids on packages containing that license or package for the duration of the auction.

85. No payments are associated with dropped bids. The round in which a bidder may drop non-provisionally winning bids from consideration will be at the bidder's discretion. The Bureau seeks comment on these proposals. The Bureau also seeks comment on the possibilities of not allowing dropped bids herein, of allowing dropped bids not subject to all the restrictions proposed, and of imposing other restrictions than those proposed herein.

D. Considerations Relating to Certain Post-Auction Payment Rules

i. Apportioning Package Bids

86. Given that the Commission has determined that package bidding will be used for the C Block licenses in Auction 73, the Bureau seeks comment on the appropriate mechanism for apportioning package bids among the individual licenses comprising the package. In package bidding, when a bidder places an all-or-nothing bid on a package of licenses, there will be no identifiable bid amounts on the individual licenses that comprise the package. However, the Commission's competitive bidding rules and procedures assume that the amount of each bid on an individual license always is known. For example, rules for calculating the amount of small business, new entrant, or tribal land bidding credits presume that the winning bid on the license is known. Similarly, in determining the amount of a default or withdrawal payment, which involves a comparison between the withdrawing or defaulting bidder's bid and a subsequent bid, the rules assume that there are bid amounts for individual licenses. Accordingly, the Commission recently adopted a new rule providing that, in advance of each auction with package bidding, the Commission shall establish a methodology for determining how to estimate the price or bid on an individual license included in a package of licenses.

87. The Bureau proposes to apportion package bids when regulatory calculations require individual license bid amounts by dividing the package bid amount among the licenses comprising the package in proportion to the number of bidding units for each license. Alternatively, the Bureau proposes to use the final round CPEs for each license to apportion package bids. The Bureau seeks comment on these proposals.

ii. Interim Withdrawal Payment Percentage

88. The Bureau seeks comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment, in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction. However, if a license for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the final withdrawal payment cannot be calculated until a corresponding license receives a higher bid or winning bid in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

89. The Commission recently amended its rules to provide that in advance of the auction, the Commission shall establish a percentage between three percent and twenty percent of the withdrawn bid to be assessed as an interim bid withdrawal payment. When it adopted the new rule, the Commission indicated that it would consider the nature of the service and the inventory of the licenses being offered when determining the level of the interim withdrawal payment in a particular auction.

90. Auction 73 will offer licenses under several different geographic licensing schemes and bandwidth sizes, and bidders may have a legitimate interest in using withdrawals to facilitate their efforts to aggregate licenses across potentially substitutable blocks of licenses not subject to package bidding. The Bureau also believes that the likely significant bid amounts for licenses in this auction (and resulting absolute value of withdrawal payments) will in themselves serve as a deterrent to unnecessary withdrawals. Therefore, the Bureau does not propose to set the interim bid withdrawal payment at the maximum rate of twenty percent. At the same time, the Bureau believes that a rate above the minimum three percent will help deter undesirable strategic use of withdrawals. Specifically, the Bureau proposes to establish an interim bid withdrawal payment of ten percent of the withdrawn bid in Auction 73. This proposal, moreover, is consistent with bid withdrawal payment percentages adopted in recent auctions for wireless licenses. The Bureau seeks comment on this proposal.

iii. Additional Default Payment Percentage

91. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) is liable for a default payment under section 1.2104(g)(2) of the Commission's rules. This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Until recently this additional payment for non-combinatorial auctions has been set at three percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

92. The percentage of the bid that a defaulting bidder must pay in addition to the deficiency will depend on the auction format ultimately chosen for a particular auction. In non-package auctions, the amount can range from three percent up to a maximum of twenty percent, established in advance of the auction and based on the nature of the service and the inventory of the licenses being offered. In auctions with package bidding, the additional payment is set, pursuant to section 1.2104(g)(2)(ii), at 25 percent of the applicable bid. This higher level reflects the fact that a defaulted winning bid in an auction with package bidding may have affected which other bids were winning.

93. The Bureau proposes to establish an additional default payment of fifteen percent with respect to bids on licenses in Blocks A, B, D, and E, which are not

subject to package bidding. As previously noted by the Commission, defaults weaken the integrity of the auction process and impede the deployment of service to the public, and an additional default payment of more than three percent will be more effective in deterring defaults. Moreover, the Bureau believes an additional default payment greater than ten percent, which the Commission has established in several recent auctions, is appropriate for Auction 73. Because no licenses in Blocks A, B, or E will be sold unless the aggregate reserve price for that block is met, bidders may have an additional incentive to bid on a license and later default (after determination that the reserve price has been met), in order to help ensure that the reserve price is met and other initial licenses in the block are assigned. The Bureau believes a higher additional default payment will help deter such behavior. With respect to the D Block, for which there is a single nationwide license which will not be assigned unless the D Block reserve price is met, a default by the winning bidder will delay the especially time-sensitive process of establishing a public-private partnership for the provision of public safety services. Given the unusually large public interest benefits of timely licensing the D Block, the Bureau proposes to deter defaults by imposing a higher additional default payment in that block as well. Accordingly, the Bureau proposes an additional default payment of fifteen percent on licenses in the A, B, D, and E Blocks. The Bureau seeks comment on this proposal.

94. For licenses in the C Block, because they are subject to package bidding, the additional default payment will be the twenty-five percent as set forth in Section 1.2104(g)(2)(ii). This additional default payment will apply to all bids for packages and for licenses that are subject to package bidding.

V. Contingent Subsequent Auction

95. In the *700 MHz Second Report and Order,* the Commission concluded that if licenses for the A, B, C or E Blocks are not assigned because the auction results for the licenses as initially offered do not satisfy the applicable aggregate reserve price(s), the public interest will be served by offering alternative licenses for the relevant blocks as soon as possible after the initial auction. Similarly, if the license for the D Block is not assigned because the auction results do not satisfy the reserve price applicable to that license, the license for the D Block may be offered again in a prompt subsequent auction. As detailed in the *700 MHz Second Report and Order,* any alternative A, B and E Block licenses will be subject to alternative performance requirements. With respect to the C Block, any alternative licenses will be based on different geographic areas and spectrum bandwidth, as detailed herein. In addition, the alternative C Block licenses will not be subject to the open platform conditions applicable to the licenses initially offered for the C Block.

96. The Commission directed the Bureau to permit only qualified bidders in the initial auction to participate in any contingent subsequent auction and to use the same auction design, including the applicable aggregate reserve price(s), insofar as possible. Pursuant to these directions, the Bureau proposes and seeks comment on the following procedures for a contingent subsequent auction. Except as detailed herein, the Bureau proposes to apply all of the procedures discussed herein for Auction 73 to such a subsequent auction.

97. *Licenses To Be Offered.* Licenses in the A, B, D and E Block offered in any contingent subsequent auction will cover the same geographic areas and frequencies as such licenses offered in the initial auction. However, the alternative C Block will include C1 Block licenses offered in each of the 176 EAs and C2 Block licenses offered in each of the 12 REAGs. A complete list of alternative C Block licenses that would be offered in such an auction is included as Attachment D of the *Auction 73 Comment Public Notice.*

Block	Frequencies (MHz)	Bandwidth	Pairing	Area Type	Licenses
C1	746–752, 776–782	12 MHz	2 × 6 MHz	EA	176
C2	752–757, 782–787	10 MHz	2 × 5 MHz	REAG	12

98. *Auction Design.* If the subsequent auction offers only licenses not subject to package bidding in Auction 73, *i.e.*, licenses for Blocks A, B, D, and/or E, the Bureau proposes to conduct the subsequent auction using the Commission's standard SMR auction design without package bidding. The procedures applicable to the auction will be the same as those discussed herein with respect to licenses for Blocks A, B, D and E in Auction 73, subject to the differences discussed herein.

99. The Bureau is not certain that package bidding will be appropriate with respect to C1 and C2 Block licenses that may be available in a subsequent auction. The Bureau seeks comment on whether it should implement HPB for such alternative C Block licenses in a subsequent auction. If so, the Bureau seeks comments suggesting levels and ways of packaging licenses within levels using HPB or SMR–HPB auction formats, depending on whether the subsequent auction also includes licenses for Blocks A, B, D, and/or E.

100. *Aggregate Reserve Prices.* As required by the Commission, the licenses in a subsequent auction will be subject to the same aggregate reserve price(s) applicable in the initial auction. In the *700 MHz Second Report and Order,* the Commission noted that the Bureau has delegated authority to determine how to allocate the C Block reserve price upon auction of alternative licenses. Accordingly, the Bureau proposes to apply the C Block aggregate reserve price of $4.637854 billion to all of the alternative C Block licenses. That is, the sum of the gross bid amounts on the C1 and C2 Block licenses must equal or exceed $4.637854 billion in order to meet the reserve price. The Bureau seeks comment on this proposal and on alternatives to this proposal. Commenters may wish to address whether, in the alternative, the C Block reserve price should be split between the C1 and C2 Blocks based on their respective bandwidths (e.g., $2.529739 billion and $2.108115 billion for the C1 and C2 Blocks, respectively) or by other measures.

101. *Pre-Auction Application Process.* As noted herein, the Commission has directed that only applicants found qualified to bid in Auction 73 may be eligible to bid in any contingent subsequent auction. The Bureau proposes that the subsequent public notice announcing the close of Auction 73 also will announce the auction number of the contingent subsequent auction and the deadline for pre-auction submissions in connection with any contingent subsequent auction. That public notice will specify the licenses that will be offered in the subsequent auction, the deadline by which qualified bidders must select licenses to be offered in order to be eligible to bid on those licenses, and the deadline by

which such bidders must submit upfront payments to purchase bidding eligibility in the subsequent auction. The Bureau proposes that the public notice will provide that the deadline for selecting alternative licenses will be 10 business days from the date of the public notice and the deadline for submitting upfront payments will be 10 business days from the date of the selection deadline. This will enable bidding on the alternative licenses to begin less than two months after the public notice announcing the close of Auction 73. The Bureau seeks comment on this proposal.

102. *Effective Period for Anti-Collusion Rule.* In the *700 MHz Second Report and Order,* the Commission directed the Bureau to adopt any procedures that may enhance the effectiveness of an auction of licenses in Auction 73 or any subsequent contingent auction. In part, the Commission found that the Commission's anti-collusion rule should treat Auction 73 and any such subsequent auction as a single auction, given the related nature of the auctions. Accordingly, the applicable down payment deadline marking the end of the anti-collusion period for Auction 73 and any subsequent auction shall be the down payment deadline established following the close of the subsequent auction.

103. *Minimum Opening Bids.* For a contingent subsequent auction, the Bureau proposes to calculate minimum opening bid amounts on a license-by-license basis using the same approach as described herein that draws on the Auction 66 prices that were bid on licenses for the exact same geographic areas. The proposed minimum opening bid amounts for the C1 and C2 Block licenses that would be available in a contingent subsequent auction are set forth in Attachment D of the *Auction 73 Comment Public Notice.* For any licenses in other blocks offered in the same subsequent auction, the Bureau proposes the same minimum opening bid amounts set forth in Attachment A of the *Auction 73 Comment Public Notice.* The Bureau seeks comment on these proposals and other possible amounts for minimum opening bids. If commenters believe that these minimum opening bid amounts will result in unsold licenses or are not reasonable amounts, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested amounts or formulas. The change of conditions with respect to any licenses for the A, B, C and E Blocks to be offered in a subsequent auction should increase the value of the licenses and may support higher minimum opening bids. In addition, the bidding in the initial auction may provide further information regarding the appropriate level of minimum opening bids. If the Bureau modifies the minimum opening bids, it will announce the new minimum opening bids in the same public notice announcing pre-auction procedures.

104. *Additional Procedures.* The Commission also directed the Wireless Bureau to consider what procedures may be appropriate to deter bidders from actions that might thwart the assignment of licenses in either auction. The Bureau proposes that otherwise eligible bidders will be denied bidding eligibility in a subsequent auction in the event that they default on any winning bids in the initial auction. The Bureau seeks comment on this proposal, as well as comment on any other proposals that may enhance the effectiveness of the auction of licenses in Auction 73 or any contingent subsequent auction.

VI. Deadlines and Filing Procedures

105. Comments are due on or before August 31, 2007, and reply comments are due on or before September 7, 2007. All filings related to the auction of 700 MHz spectrum licenses should refer to AU Docket No. 07–157. Comments may be submitted using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Bureau strongly encourages interested parties to file comments electronically, and requests submission of a copy via the Auction 73 e-mail box (*auction73@fcc.gov*).

106. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E7–16677 Filed 8–20–07; 11:58 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 7, 2007.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. The 2007 Voting Trust Agreement, and its trustees, Albert Charles Kelly, Jr. and Peter John Kelly, both of Bristow, Oklahoma; Shawn Trevor Kelly, Edmond, Oklahoma; Paul Harrison Cornell, Tulsa, Oklahoma; and Allison Asbury Kelly, Okemah, Oklahoma, all to acquire voting shares of Citizens Bankshares, Inc., Okemah, Oklahoma, and thereby indirectly acquire voting shares of Citizens State Bank, Okemah, Oklahoma.

Board of Governors of the Federal Reserve System, August 20, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–16679 Filed 8–22–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 17, 2007.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414.

1. Fox River Financial Corporation, Burlington, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Fox River State Bank, Burlington, Wisconsin.

Board of Governors of the Federal Reserve System, August 20, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–16680 Filed 8–22–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 7, 2007.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Mitsubishi UFJ Financial Group, Inc., and The Bank of Tokyo–Mitsubishi UFJ, Ltd., both of Tokyo, Japan; to acquire up to 12 percent of the voting shares of Visa, Inc., San Francisco, California, and thereby indirectly engage in the operation of electronic funds transfer systems; the operation of authorization, clearing, and settlement systems; and data processing, pursuant to section 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, August 20, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E7–16678 Filed 8–22–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods for Prevention and Treatment of Polyomavirus Infection or Reactivation

Description of Technology: Available for licensing and commercial development are methods of using Tranilast [N-(3',4'-dimethoxycinnamoyl)anthranilic acid] in the prevention and treatment of human polyomavirus infection. Treatment with Tranilast decreases viral protein expression for two human polyomavirus species, JC virus (JCV) and BK virus (BKV). Furthermore, the increase in JCV/BKV protein production observed upon the addition of TGF-β could also be effectively abolished by Tranilast co-treatment. This is of relevance because TGF-β has previously been demonstrated to increase during immunosuppressive conditions, including HIV infection and kidney transplantation.

JCV is responsible for demyelization of the central nervous system, which is observed in cases of progressive multifocal leukoencephalopathy (PML). PML is most frequently seen in patients with HIV/AIDS, but is also a contributing factor in fatalities in patients with leukemia, lymphoma, and connective tissue diseases, in addition to individuals receiving immunosuppressive therapy for autoimmune disorders or prevention of transplant rejection. BKV is associated with serious clinical syndromes such as viruria and viremia, ureteral ulceration and stenosis, and hemorrhagic cystitis and has a causative role in polyomavirus-associated nephrophathy in as many as 10% of all renal transplant recipients. Currently, there are no effective antiviral agents available to treat these opportunistic infections. In all observed cases, activation of either JCV or BKV in immunosuppressed patients has resulted in fatalities.

Applications: Use in treatment and prevention of polyomavirus infection in immunocompromised patients. Specific target is the prevention of PML in treatment therapies for MS patients.

Development Status: In vitro data is currently available and inventors are actively developing the technology.

Inventors: Veersamy Ravichandran (NINDS), Jeffrey B. Kopp (NIDDK), and Eugene O. Major (NINDS)

Patent Status: U.S. Provisional Application No. 60/948,426 filed 06 Jul 2007, entitled ''Compositions and Methods for Preventing or Treating Disease Caused by Polyomavirus Infection or Reactivation in a Mammalian Subject'' (HHS Reference No. E–179–2007/0–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Cristina Thalhammer-Reyero, Ph.D., M.B.A.; 301/435–4507; *thalhamc@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Neurological Disorders and Stroke is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize treatment and prevention of polyomavirus infections in immunocompromised patients, with particular interest in JCV and demyelination. Please contact Melissa Maderia, Ph.D., at *maderiam@mail.nih.gov* for more information.

Measles Virus Strain for Diagnostic Applications

Description of Technology: This technology describes a low passage Edmonston strain of measles virus that is more sensitive to neutralization by serum antibodies than the same virus that has been passaged more. This strain can be used to detect lower levels of measles neutralizing antibody than other measles virus strains. This material could also be used to assess effectiveness of anti-measles therapeutics or vaccines.

Application: Measles diagnostic.

Inventors: Paul Albrecht, Judy Beeler, Susette Audet, Dorothy Farrell, G. Richard Burns (CBER/FDA).

Publication: P Albrect *et al.* Role of virus strain in conventional and enhanced measles plaque neutralization test. J Virol Methods. 1981 Dec;3(5):251–260.

Patent Status: HHS Reference No. E–125–2007/0—Research Tool. Patent protection is not being sought for this technology.

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Susan Ano, Ph.D.; 301/435–5515; *anos@mail.nih.gov.*

Recombinant Baculoviruses Containing Inserts of the Major Structural Genes (vp1) of the Human Polyomaviruses JCV and BKV

Description of Invention: The development of sensitive and specific tests for JC virus and BK virus activity may provide tools essential in the steps required to find a treatment for these fatal infections. This invention describes a Recombinant Vp1 protein (rVp1) that can be used (1) as an antigen source for ELISA assays (2) for studies of viral proteins in cells and (3) for the self assembly of icosahedral particles encapsidating DNA [gene expression of choice in range of up to 5.1kb size gene].

rVp1 can be utilized in ELISA assays to detect both JCV and BKV antibodies. The JCV and BKV rVp1 proteins may serve as antigens for the production of useful anti-sera and monoclonal-antibodies for polyomavirus research, as well as for the detection of existing and/or changing levels of antibodies in human sera by way of ELISA assays. Such ELISA studies allow for tracking of the spread and/or reactivation of polyomavirus infections in the human population, of special importance for individuals at high risk of polyomavirus associated pathologies. The rVp1s eliminate the need to produce infectious, native polyomavirus virions as antigens for such work.

The rVp1 proteins may also be utilized as vector delivery systems. The rVp1 proteins self-assemble into Virus-Like Particles (VLPs) which can be dissociated, reconstituted in the presence of exogenous DNA (that is non-specifically encapsidated), and then internalized through cell membranes that native virions normally cross.

Applications: JCV or BKV antigens useful for polyomavirus research; ELISA studies for individuals at high risk of polyomavirus associated pathologies; Vector Delivery systems.

Developmental Status: ELISA is fully developed and materials are available for licensing.

Inventors: Eugene Major and Peter Jensen (NINDS).

Publications:

1. C Goldmann *et al.* Molecular cloning and expression of major structural protein VP1 of the human polyomavirus JC virus: Formation of virus-like particles useful for immunological and therapeutic studies. J Virol 1999 May;73(5):4465–4469.

2. RS Hamilton *et al.* Comparison of antibody titers determined by hemagglutination inhibition and enzyme immunoassay for JC virus and BK virus. J Clin Microbiol. 2000 Jan;38(1):105–109.

3. P Lenz *et al.* Papillomavirus-like particles induce acute activation of dendritic cells. J Immunol. 2001 May 1;166(9):5346–5355.

4. DL Bohl *et al.* Donor origin of BK virus in renal transplantation and role of HLA C7 in susceptibility to sustained BK viremia. Am J Transplant. 2005 Sep;5(9):2213–2221.

5. EO Major and P Matsumura. Human embryonic kidney cells: stable transformation with an origin-defective simian virus 40 DNA and use as hosts for human papovavirus replication. Mol Cell Biol. 1984 Feb;4(2):379–382.

6. EO Major *et al.* Establishment of a line of human fetal glial cells that supports JC virus multiplication. Proc Natl Acad Sci USA. 1985 Feb;82(4):1257–1261.

Patent Status: HHS Reference No. E–216–2006/0—Research Material. Patent protection is not being sought for this technology.

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Neurological Disorders and Stroke is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize treatment and prevention of polyomavirus infections in immunocompromised patients. Please contact Melissa Maderia, Ph.D., at *maderiam@mail.nih.gov* for more information.

Probe Set Global Optimization

Description of Technology: Available for licensing and commercial development are methods to optimize sequence-based assays such as microarrays, multiplexed PCR or multiplexed antibody methods. This computational method uses numerical optimization to identify an optimal probe set to be used in an assay for the measurement of a specified set of targets. The method incorporates the sequence information of the target (protein, DNA, RNA or other polymer), the assay characteristics, limits on probe set size and assay probe length in its optimization. The method selectively optimizes the total information provided by the assay within constraints of individual probe performance and coverage of all targets in the target set. For example, the target set of sequences could represent known viral or bacterial pathogens, or splice variants of a single gene. The method selectively identifies sequences within each target sequence with the best individual probe performance and providing the most information. An individual probe may be selected because it provides specific information about a single target (specificity) or because it increases (sensitivity) by providing replicate

measurements of a sequence common to several targets.

The method's software design allows for large (>10,000) target sets and large probe set sizes (2->1,000,000). While current selection criteria involve a time consuming iterative and manual process, the present invention allows for the identification of a quantitatively optimized probe set which balances probe performance criteria and simultaneously optimizes the sensitivity and specificity of the assay for a given set of targets.

Applications: The invention has applications in the design of various important assays, such as those based on microarrays, multiplexed PCR and SPR, targeted protein fragment detection, or any sequence-specific binding and detection. It has application where the number of probes to be used in an assay is too large for manual design and review.

Inventors: Eric Billings and Kevin E. Brown (NHLBI).

Patent Status: U.S. Provisional Application No. 60/871,447 filed 21 Dec 2006, entitled ''Probe Set Global Optimization'' (HHS Reference E–332–2005/0–US–01).

Development Status: The technology is ready to be applied and validated in many different areas for research and diagnostic purposes.

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Cristina Thalhammer-Reyero, Ph.D., M.B.A.; 301/435–4507; *thalhamc@mail.nih.gov.*

Collaborative Research Opportunity: The National Heart, Lung and Blood Institute, Computational Biophysics Laboratory is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, utilize or commercialize a method for optimizing sequence-based assays. Please contact Dr. Eric Billings, at (301) 496–6520 or via e-mail at *billings@helix.nih.gov* for more information.

Dated: August 16, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–16644 Filed 8–22–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: September 27, 2007.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20982.

Open: 10:30 a.m. to Adjournment.

Agenda: Following opening remarks by the Director, NEI there will be presentations by the staff of the Institute and discussions concerning Institute programs.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Contact Person: Lore Anne McNicol, PhD, Director, Division of Extramural Research, National Eye Institute, National Institutes of Health, Bethesda, MD 20892, (301) 451–2020.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institutes's/Center's home page: *http://www.nei.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: August 14, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4100 Filed 8–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Supplementary Risk Assessments and Site Suitability Analyses for the National Emerging Infectious Disease Laboratory, Boston University Medical Center

ACTION: Availability of Supplementary Risk Assessments and Site Suitability Analyses for the National Emerging Infectious Disease Laboratory, Boston University Medical Center; notice of hearing.

SUMMARY: The National Institutes of Health (NIH) has placed in the docket for public review and comment the Supplementary Risk Assessments and Site Suitability Analyses for the National Emerging Infectious Disease Laboratory, Boston University Medical Center, which address additional concerns of the local community regarding possible impacts of the National Emerging Infectious Diseases Laboratory, Boston University Medical Center. The purpose of the Supplementary Risk Assessments and Site Suitability Analyses for the National Emerging Infectious Disease Laboratory was alternative site analysis and risk assessment that investigated potential infectious disease threats that may be posed to the public should an exotic infectious agent be released into the community through an infected laboratory worker, laboratory accident, or other mishap.

DATES: Comments on the Supplementary Risk Assessments and Site Suitability Analyses for the National Emerging Infectious Disease Laboratory must be received by Monday, November 12th. A public hearing will be held on Thursday, September 20, 2007, from 7–9 p.m. at Faneuil Hall, Dock Square, Boston, MA 02109.

ADDRESSES: Comments should be sent to Valerie Nottingham, Division of Environmental Protection, National Institutes of Health, 9000 Rockville Pike, Building 13, Room 2S11, Bethesda, MD 20892, MSC 5746. E-mail comments should be sent to *nihnepa@mail.nih.gov.* Comments sent by e-mail must be received by 11:59

p.m. on the last day of the comment period, Monday, November 12, 2007.

FOR FURTHER INFORMATION CONTACT: Valerie Nottingham, Division of Environmental Protection, National Institutes of Health, 9000 Rockville Pike, Building 13, Room 2S11, Bethesda, MD 20892, MSC 5746, telephone number 301–496–7775, E-mail address: *nihnepa@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The National Institutes of Health awarded a construction grant to Boston University to partly fund the design and construction of one of two National Biocontainment Laboratories (NBLs). These advanced biomedical research laboratories are essential to the civilian biodefense initiative providing critically needed Biosafety Levels 2, 3, and 4 research space. The basic and translational research to be conducted in these laboratories over the next 20 years will result in development of new rapid diagnostic assays, vaccines and therapeutics for protection of the American public against intentional misuse or release of harmful biological agents or toxins and emerging and re-emerging infectious diseases such as H5N1 highly pathogenic avian influenza and the SARS coronavirus.

The NIH completed and published a final Environmental Impact Statement (EIS) and published a Record of Decision as required for major federal actions under the National Environmental Policy Act (NEPA). Construction of the National Emerging Infectious Diseases Laboratory (NEIDL) began at the BioSquare II Research Park on Albany Street, Boston, Massachusetts adjacent to the Boston University Medical Center (BUMC).

During the preparation of the EIS, the NIH conducted a thorough review of the possible impacts of the NBL on the public and the environment. That review demonstrated that the construction and operation of the NBL was not a risk to the community in which the laboratory was sited or surrounding communities. In response to additional and lingering concerns raised by some members of the community, the NIH has performed additional reviews of the potential impacts of the NBL. These reviews included additional ''hard look'' alternative site analyses and risk assessments investigating potential infectious disease threats that may be posed to the public should an exotic infectious agent be released into the community through an infected laboratory worker, laboratory accident or other mishap. Additionally, the risk assessments specifically addressed an on-going community concern that an Environmental Justice community near the proposed NEIDL site in Boston would be disproportionately impacted should a release occur.

Availability of Copies and Electronic Access

Copies of the Supplementary Risk Assessments and Site Suitability Analyses for the National Emerging Infectious Disease Laboratory, Boston University Medical Center may be obtained at no cost by calling 301–496–7775, or by emailing requests to *nihnepa@mail.nih.gov.* Documents are available in alternate formats upon request. Persons who want a publication in an alternate format should specify the type of format. The document will also be available on the NIH Web site *http://www.nems.nih.gov/aspects/nat_resources/programs/nepa.cfm.*

Dated: August 15, 2007.

Daniel G. Wheeland,

Director, Office of Research Facilities Development and Operations, NIH.

[FR Doc. E7–16645 Filed 8–22–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Information Collection Authority Under Homeland Security Acquisition Regulation (HSAR)

AGENCY: Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Office, has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The Office of the Chief Procurement Officer is soliciting comments concerning an extension to an existing collection, Information collection authority under Homeland Security Acquisition Regulation (HSAR).

DATES: Comments are encouraged and will be accepted until October 22, 2007. This process is conducted in accordance with 5 CFR 1320.1

ADDRESSES: Comments and questions about this Information Collection Request should be forwarded to the Acquisition Policy and Legislation Office, Attn: Kathy Strouss for the Department of Homeland Security, Office of the Chief Procurement Officer, Room 3114, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Kathy Strouss, 202–447–5300 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS), Office of the Chief Procurement Officer requires a renewal request and a revision of an existing OMB Control number for four forms in the HSAR 48 CFR Chapter 30. This notice provides a request for renewal of the designated OMB Control Number 1600–0002 previously granted in September 2004 on the following four forms: DHS Form 0700–01, DHS Form 0700–02, DHS Form 0700–03, and DHS Form 0700–04. These four forms will be used by contractors and/or contract employees during contract administration. A fifth form, DHS Form 0700–05, which was included with initial clearance and approval for this OMB control number 1600–0002 in September 2004, is obsolete due to recent changes in the Federal Acquisition Regulation (FAR) 48 CFR Chapter 2. The change to FAR Part 45 was effective June 14, 2007 and removed previously existing annual contractor reporting requirements. The DHS Form 0700–05 supported the collection of the annual contractor report. A HSAR change will include designation of the DHS Form 0700–05, Contractor Report of Government Property as obsolete. No extension of the collection is requested for this form. DHS Form 0700–04, Employee Claim for Wage Restitution, requires an amendment to reflect a name change. The office designated for receipt of the claim currently appears as ''The General Accounting Office'' but the name has changed to ''The Government Accountability Office''. No other amendments to the DHS HSAR forms are anticipated. The Office of Management and Budget is particularly interested in comments regarding the following:

1. Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility;
2. The accuracy of the agency's estimate of the burden of the collection of information;
3. Ways to enhance the quality, utility, and clarity of the information to collected;
4. Ways to minimize the information collection burden.
5. Estimates of capital or start-up costs and costs of operation, maintenance,

and purchase of services to provide information.

Analysis

Agency: Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Office.

Title: Information collection authority under Homeland Security Acquisition Regulation (HSAR). Form(s): DHS Form 0700–01, Cumulative Claim and Reconciliation Statement; DHS Form 0700–02, Contractor's Assignment of Refunds, Rebates, Credits and other Amounts; DHS Form 0700–03, Contractor's Release; DHS Form 0700–04, Employee Claim for Wage Restitution; and DHS Form 0700–05, Contractor Report of Government Property.

OMB Number: 1600—0002.

Affected Public: Businesses and individuals seeking and who are currently contracting with the DHS.

Annual Estimated Burden: The annual estimated burden is 7,101 hours.

Nature of burden	Total annual paper burden (number of respondents x estimated time per respondent × frequency) = total burden hours	
Formula	R = number of respondents T = time per respondent F = frequency B = Burden	R × T × F = B

*Submit forms to provide the data required by various FAR clauses to facilitate contract closeout:

Form	Formula > R × T x F =	Burden > B
DHS Form 0700–01	589 × 1 × 1	589
DHS Form 0700–02	589 × 1 × 1	589
DHS Form 0700–03	5,898 × 1 × 1	5,898

*Submit claim form for nonpayment of wages. Information needed to seek restitution, via the Government Accountability Office (GAO) for contractor employees:

Form	Formula > R × T × F =	Burden > B
DHS Form 0700–04	25 × 1 × 1	= 25

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

The asterisk (*) denotes that the requested information is, in the strictest sense of the word, contract administration data. It is not data of a general nature solicited from the public at large. This information is furnished to the Government by contractors who are being paid to meet all the terms and conditions of the contract.

Scott Charbo,

Chief Information Officer.

[FR Doc. E7–16642 Filed 8–22–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Regulation on Agency Protests

AGENCY: Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Office, has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The Office of the Chief Procurement Officer is soliciting comments concerning a renewal to an existing collection, Regulation on Agency Protests.

DATES: Comments are encouraged and will be accepted until October 22, 2007. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Comments and questions about this Information Collection Request should be forwarded to the Acquisition Policy and Legislation Office, Attn: Kathy Strouss for the Department of Homeland Security, Office of the Chief Procurement Officer, Room 3114, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Kathy Strouss, 202–447–5300 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS), Office of the Chief Procurement Officer requires a renewal of an existing OMB Control number for the regulation on agency protests. This notice provides a request for comments on the renewal of the presently designated OMB Control Number 1600–0004, granted in September 2004. The information is requested from contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file agency level protests.

The Office of Management and Budget is particularly interested in comments regarding the following:

1. Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility;

2. The accuracy of the agency's information collection burden estimate;

3. Ways to enhance the quality, utility, and clarity of the information to be collected;

4. Ways to minimize the burden of the collection of information on respondents; and

5. Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Analysis

Agency: Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Office.

Title: Regulation on Agency Protests.

OMB Number: 1600–0004.

Frequency: One-time collection.

Affected Public: Businesses and individuals seeking and who are currently contracting with the DHS.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 2 hours.

Total Burden Hours: 100 hrs.

Scott Charbo,

Chief Information Officer.

[FR Doc. E7–16643 Filed 8–22–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5121–N–28]

Notice of Proposed Information Collection: Comment Request; Housing Counseling Program—Application for Approval as a Housing Counseling Agency

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, 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:* October 22, 2007.

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, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Lillian.L.Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Virginia Simmons, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2298 (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: Housing Counseling Program—Application for Approval as a Housing Counseling Agency.

OMB Control Number, if applicable: 2502–NEW.

Description of the need for the information and proposed use: National, regional, Multi-State intermediaries and Local public and private nonprofit agencies that provide housing counseling services directly or through their affiliates or branches regarding home buying, homeownership and rental housing programs submit an application for designation as a HUD-approved housing counseling agency. HUD uses the information to evaluate the agency and to populate Agency profile data in the Housing Counseling System (HCS) database. This data populates HUD's Web site and automated 1–800 hotline.

Agency form numbers, if applicable: HUD–9900.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is 200, the frequency of responses is on occasion, for a total of 200 total annual responses. The estimated time to prepare collection is approximately 8 hours, for a total annual burden hours of 1,600 hours.

Status of the proposed information collection: This is a request for a new information collection. The information collection was previously approved under OMB Control No. 2502–0261.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 13, 2007.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E7–16637 Filed 8–22–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–69]

Notice of Submission of Proposed Information Collection to OMB; Housing Opportunities for Persons With AIDS (HOPWA) Program; HOPWA Competitive and Renewal of Permanent Supportive Housing Project Budget Summary; Annual Progress Report (APR); and Consolidated Annual Performance and Evaluation Report (CAPER)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The competitive application Project Budget Summary is used by HOPWA competitive grants applications to identify funding requests by eligible activity and to show how these resources will the used over the three grant period—this form also includes the accompanying program certifications. HOPWA formula and competitive grantees are required to submit annual performance reports that enables an assessment of grantee progress towards implementing the HOPWA housing stability annual performance outcome measure while measuring project success against planned and actual accomplishments.

DATES: *Comments Due Date:* September 24, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0133) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Housing Opportunities for Persons with AIDS (HOPWA) Program; HOPWA Competitive and Renewal of Permanent Supportive Housing Project Budget Summary; Annual Progress Report (APR); and Consolidated Annual Performance and Evaluation Report (CAPER).

OMB Approval Number: 2506–0133.

Form Numbers: HUD–40110–B, HUD–40110–C, and HUD–40110–D.

Description of the Need for the Information and Its Proposed Use:

The competitive application Project Budget Summary is used by HOPWA competitive grants applications to identify funding requests by eligible activity and to show how these resources will the used over the three grant period—this form also includes the accompanying program certifications. HOPWA formula and competitive grantees are required to submit annual performance reports that enables an assessment of grantee progress towards implementing the HOPWA housing stability annual performance outcome measure while measuring project success against planned and actual accomplishments.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	247	1		122.2		30,203

Total Estimated Burden Hours: 30,203.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 17, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–16640 Filed 8–22–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by September 24, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Peter S. Contacos, Johnstown, PA, PRT–159522.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be

appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: University of Massachusetts, Lowell, MA, PRT–156390.

The applicant requests a permit to take wild and captive manatees (*Trichechus manatus latirostris*) in Florida using a DIDSON sonar device for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: U.S. Fish and Wildlife Service, Marine Mammals Management, Anchorage, AK, PRT–041309.

The applicant requests an amendment of their permit to collect carcasses of Northern sea otters (*Enhydra lutris kenyoni*) in Alaska for the purpose of scientific research to identify patterns of mortality and issues of population health. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: July 20, 2007.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–16712 Filed 8–22–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–07–1320–EL–P; NDM 96918]

Notice of Invitation—Coal Exploration License Application NDM 96918

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Members of the public are hereby invited to participate with Dakota Westmoreland Corporation in a program for the exploration of coal deposits owned by the United States of America in lands located in Mercer County, North Dakota, encompassing 640.00 acres.

FOR FURTHER INFORMATION CONTACT: Stephen Van Matre, Mining Engineer, or Connie Schaff, Land Law Examiner, Branch of Solid Minerals (MT–921), Bureau of Land Management (BLM), Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5082 or (406) 896–5060, respectively.

SUPPLEMENTARY INFORMATION: The lands to be explored for coal deposits are described as follows:

T.143N., R.88W., 5th P.M.
14: S½NW¼
20: NW¼NW¼, S½NW¼, N½SW¼, NW¼SE¼
22: S½

Any party electing to participate in this exploration program shall notify, in writing, both the State Director, BLM, 5001 Southgate Drive, Billings, Montana 59101–4669, and Dakota Westmoreland Corporation, P.O. Box 39, Beulah, North Dakota 58523. Such written notice must refer to serial number NDM 96918 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the Bismarck Tribune newspaper, whichever is later. This Notice will be published once a week for two (2) consecutive weeks in the *Bismarck Tribune,* Bismarck, North Dakota.

The proposed exploration program is fully described, and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by Dakota Westmoreland Corporation, is available for public inspection at the BLM, 5001 Southgate Drive, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.), Monday through Friday.

Dated: August 15, 2007.

Edward L. Hughes,

Acting Chief, Branch of Solid Minerals.

[FR Doc. E7–16710 Filed 8–22–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–6334–BJ: GP07–0176]

Filing of Plats of Survey: Oregon/Washington; In Reply Refer to: 1550 (130)P

AGENCY: U.S. Department of the Interior, Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plat of survey of the following described lands is scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Washington

T. 11 N., R. 19 E., accepted July 12, 2007.

A copy of the plat may be obtained from the Land Office at the Oregon/Washington State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Sciences, Bureau of Land Management, (333 SW., 1st Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: August 10, 2007.

Fred O'Ferrall,

Branch of Lands and Minerals Resources.

[FR Doc. E7–16667 Filed 8–22–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200-GULF.

SUPPLEMENTARY INFORMATION: MMS prepares SEAs and FONSIs for proposals that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the

significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

This listing includes all proposals for which the Gulf of Mexico OCS Region prepared a FONSI in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Energy Resource Technology, Inc., Structure Removal, SEA ES/SR 06–010A.	East Cameron, Block 231, Lease OCS–G 02038, located 13 miles from the nearest Louisiana shoreline.	4/2/2007
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 07–017 ...	Viosca Knoll, Block 114, Lease OCS–G 16536, located 30 miles from the nearest Mississippi shoreline.	4/3/2007
Walter Oil & Gas Corporation, Structure Removal, SEA ES/SR 07–019.	Eugene Island, Block 99, Lease OCS–G 21637, located 20 miles from the nearest Louisiana shoreline.	4/4/2007
Newfield Exploration Company, Structure Removal, SEA ES/SR 07–040.	South Timbalier, Block 107, Lease OCS–G 15319, located 25 miles from the nearest Louisiana shoreline.	4/4/2007
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 07–038 ..	Viosca Knoll, Block 114, Lease OCS–G 16536, located 30 miles from nearest Mississippi shoreline.	4/4/2007
Merit Energy Company, Structure Removal, SEA ES/SR 06–129	East Cameron, Block 254, Lease OCS–G 02039, located 74 miles from the nearest Louisiana shoreline.	4/12/2007
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 07–039 ...	Eugene Island, Block 231, Lease OCS–G 00980, located 39 miles from the nearest Louisiana shoreline.	4/13/2007
SPN Resources, LLC, Structure Removal, SEA ES/SR 07–044	Vermilion, Block 60, Lease OCS–G 02870, located 14 miles from the nearest Louisiana shoreline.	4/13/2007
SPN Resources, LLC, Structure Removal, SEA ES/SR 07–043	West Cameron, Block 305, Lease OCS–G 25893, located 34 miles from the nearest Louisiana shoreline.	4/13/2007
Pioneer Natural Resources USA, Inc., Structure Removal, SEA ES/SR 07–047.	Eugene Island, Block 208, Lease OCS–G 00577, located 48 miles from the nearest Louisiana shoreline.	4/16/2007
TGS-NOPEC Geophysical Company, Geological & Geophysical Exploration of Mineral Resources, SEA L07–05.	Located in the eastern Gulf of Mexico, south of Pensacola, Florida.	4/18/2007
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 06–030 ..	Vermilion, Block 245, Lease OCS–G 01146, located 64 miles from the nearest Louisiana shoreline.	4/18/2007
Hydro Gulf of Mexico, LLC, Structure Removal, SEA ES/SR 07–050.	West Cameron (South Addition), Block 459, Lease OCS–G 21056, located 79 miles from the nearest Louisiana shoreline.	4/18/2007
SPN Resources, LLC, Structure Removal, SEA ES/SR 07–041, 07–042, 07–045.	West Cameron, Block 280, Lease OCS–G 00911, located 64 miles from the nearest Louisiana shoreline.	4/20/2007
Chevron U.S.A. Inc, Structure Removal, SEA ES/SR 07–053	Eugene Island, Block 214, Lease OCS–G 00977, located 48 miles to nearest Louisiana shoreline.	5/1/2007
Merit Energy Company, Structure Removal, SEA ES/SR 07–051	East Cameron, Block 142, Lease OCS–G 16239, located 37 miles from the nearest Louisiana shoreline.	5/2/2007
PGS Multi Klient Invest AS, Geological & Geophysical Exploration of Mineral Resources, SEA L07–13.	Located in the central Gulf of Mexico, south of Fourchon, Louisiana.	5/2/2007
Multi Klient Invest AS, Geological & Geophysical Prospecting for Mineral Resources, SEA L07–14.	Located in the central Gulf of Mexico south of Fourchon, Louisiana.	5/9/2007
Western GECO, Geological & Geophysical Prospecting for Mineral Resources, SEA L07–12.	Located in the central Gulf of Mexico south of Fourchon, Louisiana.	5/9/2007
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 07–048 ..	South Timbalier, Block 176A, Lease OCS–G 01259, located 35 miles from the nearest Louisiana shoreline.	5/9/2007
Mariner Energy, Inc., Structure Removal, SEA ES/SR 07–058 ...	High Island, Block A–551, Lease OCS–G 03757, located 92 miles from the nearest Texas shoreline.	5/15/2007
Energy Resource Technology, Inc., Structure Removal, SEA ES/SR 07–054.	South Timbalier, Block 086, Lease OCS–G 00605, located 19 miles from the nearest Louisiana shoreline.	5/15/2007
SPN Resources, Structure Removal, SEA ES/SR 07–057	West Cameron, Block 306, Lease OCS–G 23621, located 30 miles from the nearest Louisiana shoreline.	5/17/2007
BP Exploration & Production, Inc., Geological & Geophysical Prospecting for Mineral Resources, SEA L07–19.	Located in the western Gulf of Mexico south of Intracoastal City, Louisiana.	5/21/2007
Arena Offshore, LLC, Structure Removal, SEA ES/SR 07–046 ..	High Island, Block A–528, Lease OCS–G 13803, located 93 miles from the nearest Texas shoreline.	5/22/2007
Energy Resource Technology, Inc., Structure Removal, SEA ES/SR 07–001.	Vermilion, Block 328, Lease OCS–G 11896, located 93 miles from the nearest Louisiana shoreline.	5/22/2007
Apache Corporation, Structure Removal, SEA 06–147, 06–148A	Grand Isle, Block 20, Lease OCS–G 03596, located 9 miles from the nearest Louisiana shoreline.	5/24/2007
Energy Resource Technology, Inc., Structure Removal, SEA ES/SR 06–127A, 07–008A.	East Cameron, Block 222, Lease OCS–G 02037, located 38 miles from the nearest Louisiana shoreline.	6/1/2007
Gulf of Mexico Oil & Gas Properties, LLC, Structure Removal, SEA ES/SR 06–138.	Ship Shoal, Block 148, Lease OCS–G 11983, located 24 miles from the nearest Louisiana shoreline.	6/1/2007
Chevron, U.S.A., Inc., Structure Removal, SEA ES/SR 07–059A	Mobile, Block 916, Lease OCS–G 05753, located 7 miles from the nearest Alabama shoreline.	6/13/2007
Newfield Exploration Company, Structure Removal, SEA ES/SR 07–033A, 07–035A.	West Cameron, Block 146, Lease OCS–G 01996, located 21 and 25 miles from the nearest Louisiana shoreline, respectively.	6/21/2007

Activity/Operator	Location	Date
TDC Energy, LLC, Structure Removal, SEA ES/SR 07–063	High Island, Block 233, Lease OCS–G 22241, located 31 miles from the nearest Texas shoreline.	6/26/2007
Hunt Petroleum (AEC), Inc., Structure Removal, SEA ES/SR 07–066.	Ship Shoal, Block 184, Lease OCS–G 22711, located 24 miles from the nearest Louisiana shoreline.	6/26/2007
TDC Energy, LLC, Structure Removal, SEA ES/SR 07–062	Vermilion, Block 221, Lease OCS–G 04424, located 60 miles from the nearest Louisiana shoreline.	6/26/2007
Chevron, U.S.A., Inc., Structure Removal, SEA ES/SR 07–038A	Viosca Knoll, Block 114, Lease OCS–G 16536, located 30 miles from the nearest Mississippi shoreline.	6/26/2007
Chevron, U.S.A., Inc., Structure Removal, SEA ES/SR 07–017A	Viosca Knoll, Block 161, Lease OCS–G 06876, located 43 miles from the nearest Louisiana shoreline.	6/26/2007
ATP Oil & Gas Corporation, Structure Removal, SEA ES/SR 07–065.	West Cameron (South Addition), Block 492, Lease OCS–G 16195, located 41 miles from the nearest Louisiana shoreline.	6/26/2007
Newfield Exploration Company, Structure Removal, SEA ES/SR 07–034A.	Ship Shoal, Block 57, Lease OCS–G 22696, located 15 miles from the nearest Louisiana shoreline.	6/27/2007
Maritech Resources, Inc., Structure Removal, SEA ES/SR 07–064.	Chandeleur, Block 25, Lease OCS–G 04494, located 35 miles from the nearest Louisiana shoreline.	6/28/2007
ATP Oil and Gas Corporation, Structure Removal, SEA ES/SR 07–060.	Vermilion, Block 318, Lease OCS–G 04427, located 86 miles from the nearest Louisiana shoreline.	6/28/2007

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: July 11, 2007.

Kevin Karl,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. E7–16709 Filed 8–22–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Alaska OCS Region, Beaufort Sea and Chukchi Sea, Proposed Oil and Gas Lease Sales for Years 2007 to 2012

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Call for information and nominations and Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

SUMMARY: This Call for Information and Nominations (hereinafter referred to as ''Call'') is the initial step in a multiple-sale process that incorporates planning and analysis for lease sales in the Beaufort Sea and Chukchi Sea planning areas included in the proposed final OCS Oil and Gas Leasing Program 2007–2012 (see 72 **Federal Register** (FR) 24326, May 2, 2007). Four lease sales are addressed in this Call; two in the Beaufort Sea (sales 209 and 217) and two in the Chukchi Sea (sales 212 and 221). (Sale 193 in the Chukchi Sea is a carryover from the Program for 2002–2007 and is not addressed by this Call.) Simultaneously with this Call, MMS is giving notice of its intent to prepare a multiple-sale EIS for the four sales.

DATES: Nominations and comments must be received no later than 45 days following publication of this document in the **Federal Register.** Submittals should be labeled ''Nominations for Proposed Lease Sales in the Beaufort Sea and Chukchi Sea, 2007–2012'' or ''Comments on Call for Information and Nominations for Proposed Lease Sales in the Beaufort Sea and Chukchi Sea, 2007–2012, as appropriate.

FOR FURTHER INFORMATION CONTACT: Please contact Fred King at (907) 334–5271 in MMS's Alaska OCS Region, 3801 Centerpoint Drive, Ste 500, Anchorage, AK 99503–5823 regarding questions on the Call/NOI.

SUPPLEMENTARY INFORMATION: The multiple-sale review process is based on more than 30 years of leasing in the Beaufort Sea and more than 20 years in the Chukchi Sea. In 2001, MMS initiated the multiple-sale review process by issuing a multiple-sale Call for three sales in the Beaufort Sea (sales 186, 195 and 202), held under the OCS Oil and Gas Leasing Program, 2002–2007. The MMS is now issuing a multiple-sale Call for the Beaufort Sea and Chukchi Sea sales in the proposed final program for 2007–2012.

The final multiple-sale EIS will serve as the National Environmental Policy Act (NEPA) and Coastal Zone Management Act (CZMA) Consistency Determination (CD) analysis for Beaufort Sea Sale 209 and Chukchi Sea Sale 212. MMS will prepare additional NEPA, CZMA, and Outer Continental Shelf Lands Act (OCSLA) documents, as appropriate.

Call for Information and Nominations

1. Authority

This Call is published pursuant to the OCS Lands Act as amended (43 U.S.C. 1331–1356, (1994)) and the regulations issued thereunder (30 CFR 256); and in accordance with the proposed final OCS Oil and Gas Leasing Program, 2007–2012.

2. Purpose of Call

The purpose of the Call is to gather information for the following tentatively scheduled OCS Oil and Gas Lease Sales in the Beaufort Sea and Chukchi Sea:

Lease sale, OCS planning area	Sale year
Sale 209, Beaufort Sea	2009
Sale 212, Chukchi Sea	2010
Sale 217, Beaufort Sea	2011
Sale 221, Chukchi Sea	2012

Sale 193 in the Chukchi Sea is not part of this Call. Sale 193 was initiated in 2005 (70 FR 6903) as part of the OCS Oil and Gas Leasing Program, 2002–2007, and was carried over to the Program for 2007–2012 to allow adequate time to complete necessary pre-lease steps and environmental assessment and documentation. Sale 193 is scheduled for February 2008. Information and nominations on oil and gas leasing, exploration, and development and production within the Beaufort Sea and Chukchi Sea are sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the U.S. Department of the Interior for its consideration in future decisions in the leasing process pursuant to the OCS Lands Act and regulations at 30 CFR 256. Responses are requested for the four sales listed in the Call proposed in

the Beaufort Sea and Chukchi Sea planning areas between 2007 and 2012. This Call/NOI is being issued in accordance with the proposed final OCS Oil and Gas Leasing Program, 2007–2012, published on May 2, 2007 (72 FR 24326).

This Call also does not indicate a preliminary decision to lease in the areas described below. Final decision and delineation of each area for possible leasing will be made at a later date and in compliance with applicable laws including all requirements of NEPA and OCSLA using established departmental procedures.

3. Description of Area

The area that is the subject of this Call is located offshore the State of Alaska in the Beaufort Sea and Chukchi Sea planning areas. The ''program area'' is that subarea of the larger planning areas that may be offered in the OCS Oil and Gas Leasing Program, 2007–2012. The Beaufort Sea program area extends offshore from about 3 nautical miles to approximately 205 statute miles, in water depths from approximately 25 feet to 3,000 feet. This area consists of approximately 6,045 whole and partial blocks (about 33 million acres). The Chukchi Sea program area extends offshore from 25 to approximately 275 statute miles, in water depths from approximately 60 to 660 feet (up to 3,000 feet in a portion of the program area). This area consists of 7,324 whole or partial blocks (about 40 million acres). A page size map of each area accompanies this Call. A large scale Call map showing the boundaries of the area on a block-by-block basis is available without charge from the Records Manager at the address given below, or by telephone request at 1–800–764–2627. Copies of Official Protraction Diagrams (OPDs) are also available for $2 each from Alaska OCS Region, Minerals Management Service, 3801 Centerpoint Drive, Ste. 500, Anchorage, Alaska 99503–5823, *http://www.mms.gov/alaska.*

4. Instructions on Call

Nominations and information must be received no later than 45 days following publication of this Call in the **Federal Register**. Submittals should indicate ''Nominations for Proposed Lease Sales in the Beaufort and Chukchi Sea, 2007–2012'' or ''Comments on the Call for Information for Proposed Lease Sales in Beaufort and Chukchi Seas, 2007–2012'' as appropriate. Nominations and comments may be submitted by any one the following methods:

- Mail or hand-deliver comments to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, Minerals Management Service, 3801 Centerpoint Drive, Ste. 500, Anchorage, Alaska 99503–5823.
- Submit comments by Internet through MMS Public Connect at *https://ocsconnect.mms.gov/pcs-public/*.
- Fax comments to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, Minerals Management Service at (907) 334–5242.
- E-mail comments to *arcticmultisale@mms.gov.*

Please submit e-mail or Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail or Internet message. If you do not receive a confirmation from the system that we have received your e-mail or Internet message, contact us directly at 1–800–764–2627.

The Call for Information Map delineates the Call area, all of which has been identified by MMS as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate nominations and comment on any or all of the Federal acreage within the boundaries of the Call area that they wish to have included in each of the proposed sales in the Beaufort Sea and Chukchi Sea. Although individual nominations are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record.

Nominations must be submitted using the large-scale Call for Information Map by outlining the areas of interest along block lines. Respondents should rank areas in which they have nominated according to priority of interest; for example, priority 1 (high), or 2 (medium). Blocks nominated that do not indicate priorities will be considered priority 3 (low). Respondents must be specific in indicating blocks by priority and be prepared to discuss their range of interest and activity regarding the nominated area(s). The telephone number and name of a person to contact in the nominator's organization for additional information should be included in the response. The Alaska OCS Regional Office will contact this person to set up a mutually agreeable time and place for a meeting to more fully review the company's nominations. Respondents may also submit a detailed list of blocks nominated by Official Protraction Diagram and Leasing Map designations to ensure correct interpretation of their nominations. Official Protraction Diagrams and Leasing Maps can be purchased from the Records Manager referred to above.

Companies and individuals responding this Call are advised of a dispute between the United States and Canada regarding Beaufort Sea Planning Area blocks in OPD's NR07–06, NR07–04, NS07–02, and NS07–08. (See Map Attachment 4.) While these blocks are part of the 2007 to 2012 5-Year Program Area to be considered and evaluated in the NEPA process, resolution of the claims dispute may affect the timing, terms of conditions, and potentially the issuance of leases in these four OPD's.

Comments are sought from all interested parties about particular geological (including natural hazard areas), environmental, biological, archaeological, and socioeconomic conditions or conflicts, or other information that might bear upon the potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sales and the standards of the Alaska Coastal Management Program (ACMP) and the enforceable policies of an approved local district coastal management plan. If possible, these comments should identify specific Coastal Management Program (CMP) policies of concern, the nature of the conflict foreseen, and steps that MMS could take to avoid or mitigate the potential conflict. Comments may be in terms of broad areas or restricted to particular blocks or areas of concern. Those submitting comments are requested to list block numbers or outline the subject area on the standard Call for Information Map.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this 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.

5. Use of Information from Call

Information submitted in response to this Call will be used for several purposes. Responses will be used to:

- Help identify areas of potential oil and gas development;
- Identify environmental effects and potential use conflicts;
- Assist in the scoping process for the EIS;
- Develop possible alternatives to the proposed action;
- Develop lease terms and conditions/mitigating measures;
- Identify potential conflicts between oil and gas activities and the ACMP.

6. Existing Information

The MMS has acquired a substantial amount of information, including that gained through the use of traditional knowledge, on the issues and concerns related to oil and gas leasing in the Beaufort Sea and Chukchi Sea.

An extensive environmental, social, and economic studies program has been underway in both areas since 1975. The emphasis has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological and socio-cultural effects of oil and gas activities.

Information on the studies program, completed studies, and a program status report for continuing studies in the Beaufort Sea and Chukchi Sea may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, by telephone request at (907) 334–5281 or by written request at the address stated under Description of Area. A request may also be made via the Alaska Region Web site at *http://www.mms.gov/alaska/ref/pubindex/pubsindex.htm.*

7. Tentative Schedule

The following is a list of tentative milestone dates applicable to sales covered by this Call:

Multiple-sale EIS process milestones for proposed Beaufort Sea Sales 209 and 217 and Chukchi Sea Sales 212 and 221	
Call/NOI published	August 2007.
Comments due on Call/NOI	September 2007.
Area Identification	November 2007.
Draft EIS available	July 2008.
Public Hearings	August 2008.
Final EIS available	March 2009.
Consistency Determination, Proposed Notice of Sale, Section 19 Consultation, and Notice of Sale for Beaufort Sea Sale 209	
Consistency Determination/Proposed Notice of Sale issued	March 2009.
Governor's Comments due	May 2009.
Final Notice of Sale published	October 2009.
Sale held	November 2009.
Consistency Determination, Proposed Notice of Sale, Section 19 Consultation, and Notice of Sale for Chukchi Sea Sale 212	
Consistency Determination/Proposed Notice of Sale issued	July 2009.
Governor's Comments due	October 2009.
Final Notice of Sale published	February 2010.
Sale held	March 2010.
Multiple-sale NEPA process milestones for proposed Beaufort Sea Sale 217 and Chukchi Sea Sale 221	
The Multiple-sale Supplemental EIS or Environmental Assessment for Sales 217 and 221 will commence about 21 months (Spring 2010) before Sale 217. If a Supplemental EIS is prepared, public hearings will occur approximately a year prior to Sale 217. The Final Supplemental EIS or EA will be completed and distributed to the public approximately 8 months prior to Sale 217.	
Consistency Determination, Proposed Notice of Sale, Section 19 Consultation, and Notice of Sale for Beaufort Sea Sale 217	
Consistency Determination/Proposed Notice of Sale issued	Spring 2011.
Governor's Comments due	Spring/Summer 2011.
Final Notice of Sale published	Fall 2011.
Sale 217 held	Fall/Winter 2011.
Consistency Determination, Proposed Notice of Sale, Section 19 Consultation, and Notice of Sale for Chukchi Sea Sale 221	
Consistency Determination/Proposed Notice of Sale issued	Summer 2011.
Governor's Comments due	Fall 2011.
Final Notice of Sale published	Winter 2011/2012.
Sale 221 held	Spring 2012.

Notice of Intent To Prepare an Environmental Impact Statement

1. Authority

The NOI is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4321 *et seq.* (1988)) (NEPA).

2. Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), MMS is announcing its intent to prepare a multiple-sale EIS on four tentatively scheduled oil and gas lease sales; two in the Beaufort Sea OCS Planning Area (sales 209 and 217) and two in the Chukchi Sea OCS Planning Area (sales 212 and 221). (Sale 193 in the Chukchi Sea is a carryover from the 5-Year Program for 2002–2007 and is not the subject of the NOI.) The EIS analysis

will focus on the potential environmental effects of four sales and the exploration and development and production that could result. Alternatives to the proposals which may be considered for each individual sale are to delay the sale, modify the sale, or cancel the sale. These and any additional alternatives developed through the scoping process would be considered in the sale-specific decision process. This Notice of Intent also serves to announce the initiation of the scoping process for this EIS. Throughout the scoping process, Federal, State, Tribal, and local governments and other interested parties aid MMS in determining the alternatives, issues, and mitigation measures to be analyzed in the EIS and the possible need for additional information.

The multiple-sale EIS will serve as the NEPA document for Beaufort Sea Sale 209 and Chukchi Sea Sale 212. Prior to Sales 217 (Beaufort Sea) and 221 (Chukchi Sea) MMS will gather and review the new environmental information applicable to the Beaufort Sea and Chukchi Sea Planning Areas. The MMS will summarize and assess potential effects based on this information, including any new concerns and issues, in either a Supplemental EIS or an Environmental Assessment, as appropriate. This NEPA document will be available to the public for their review prior to the issuance of the Proposed Notice of Sale.

The Department of the Interior invites other Federal, State, Tribal, and local governments to consider becoming cooperating agencies in the preparation of the EIS. We invite qualified government entities to inquire about cooperating agency status for this lease sale EIS. Per guidelines from the Council of Environmental Quality (CEQ), qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and to remember that their role in the environmental analysis neither enlarges nor diminishes the final decision making authority of any other agency involved in the NEPA process. Upon request, MMS will provide potential cooperating agencies with a written summary of ground rules for cooperating agencies including time schedules and critical action dates, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and availability of pre-decisional information. MMS anticipates this summary will form the basis for a Memorandum of Understanding between the MMS and each cooperating agency. You should also consider the ''Factors for Determining Cooperating Agency Status'' in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies on Cooperating Agencies in Implementing the Procedural Requirements of The National Environmental Policy Act. A copy of this document is available at: *http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html* and *http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html.*

The MMS, as the lead agency, will not be providing financial assistance to cooperating agencies. Even if you are not a cooperating agency, you will continue to have opportunities to provide information and comments to MMS during the normal public input phases of the NEPA/EIS process. MMS will also consult with Tribal governments on a Government-to-Government basis. If you would like further information about cooperating agencies, please contact Dr. Cleve Cowles, Regional Supervisor, Leasing and Environment, at the address noted above or by phone at (907) 334–5230.

3. New NEPA Procedure

As described above, the multiple-sale EIS will encompass the Beaufort Sea OCS Planning Area and the Chukchi Sea OCS Planning Area. The preparation of a multiple-sale, multiple-planning area EIS is a new approach for the MMS Alaska OCS Region, although it has been used for sales in the Gulf of Mexico Region. Federal offshore leasing in the Beaufort Sea began in 1978 and in the Chukchi Sea in 1988 with the potential effects of ten out of the thirteen sales analyzed by an individual EIS. Starting with the Program for 2002 to 2007, the Alaska OCS Region prepared a multiple-sale EIS for the three sales held in the Beaufort Sea OCS Planning Area. For the proposed final Program for 2007 to 2012, we extend this approach by preparing a multiple-sale, multiple-planning area EIS.

This approach will provide several benefits. It will thoroughly describe the effects of individual proposed actions (the four lease sales) and cumulative effects of reasonably-foreseeable future actions within and across the two areas. It will focus the NEPA process by making impact types and levels that change between the first and second sale in each planning area more easily recognizable. New issues will be more easily highlighted for the decisionmakers and the public. It will also eliminate the repetitive issuance of a complete EIS for each sale, a practice that has resulted in ''review burnout'' in Federal, State, tribal, and local governments, and the public.

4. Instructions on Notice of Intent

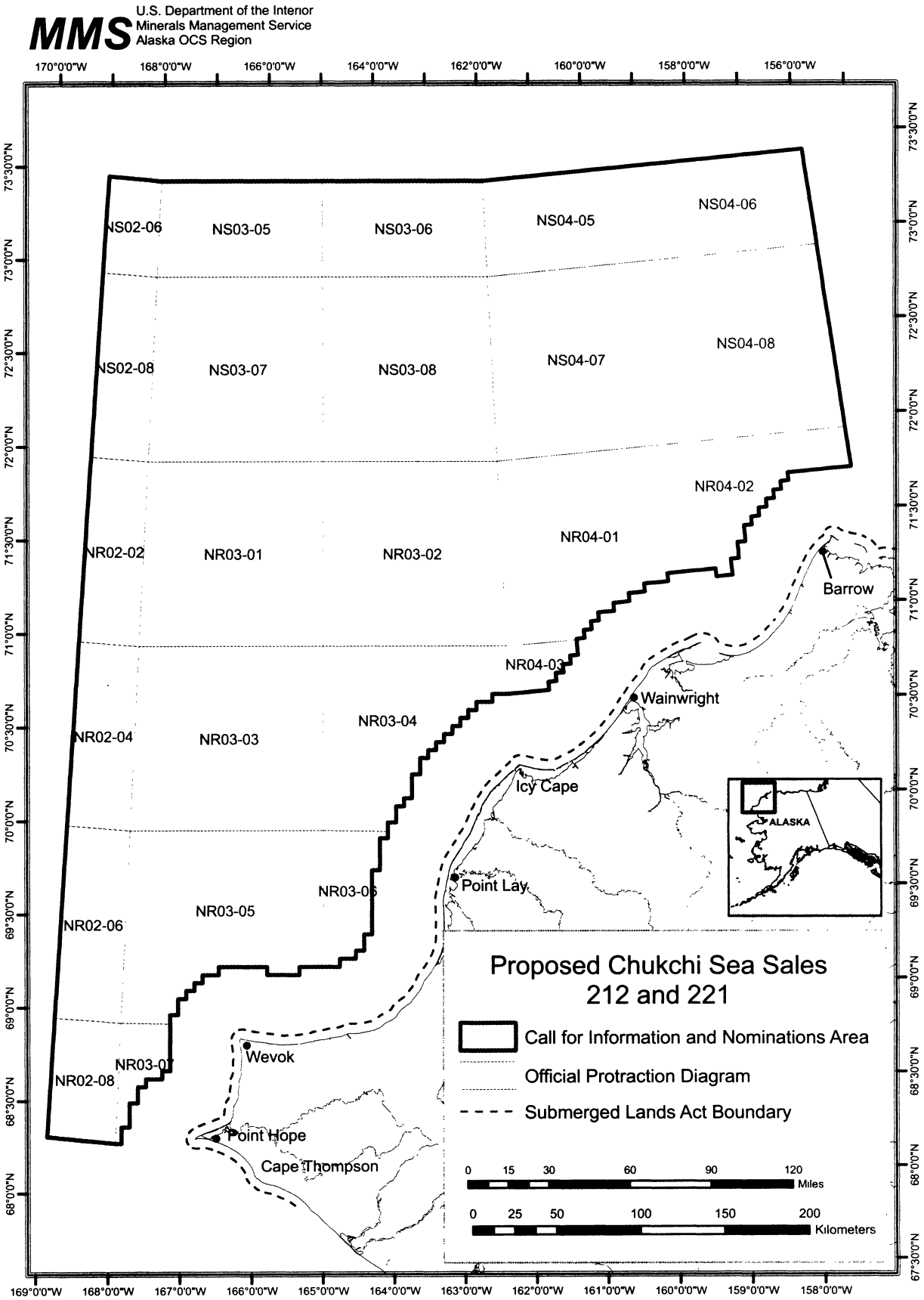
Federal, State, tribal, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, including the alternatives, issues, and mitigation measures that should be addressed in the EIS, to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Instructions on Call above. Comments should be enclosed in an envelope labeled ''Comments on the Notice of Intent to Prepare an EIS on Proposed Chukchi and Beaufort Sea Lease Sales included in the Program, 2007–2012.'' Comments are due no later than 45 days from publication of this Notice. Scoping meetings will be held in appropriate locations to obtain additional comments and information regarding the scope of this EIS.

Dated: August 8, 2007.

Randall B. Luthi,

Director, Minerals Management Service.

BILLING CODE 4310–MR–P


MMS
U.S. Department of the Interior
Minerals Management Service
Alaska OCS Region
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NR04-02
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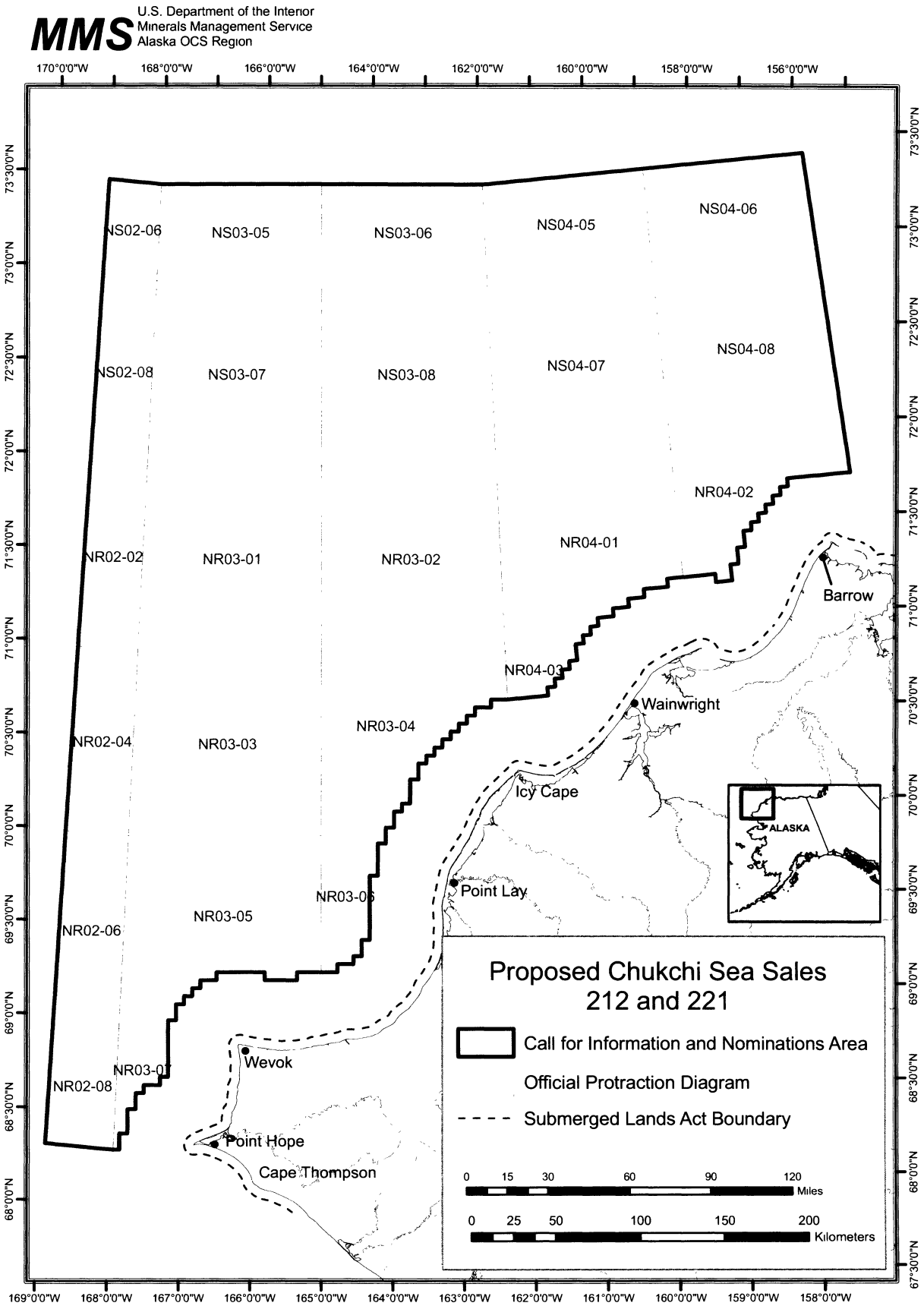
NR03-01
NR03-02
NR04-01
Barrow
NR04-03
Wainwright
NR02-04
NR03-03
NR03-04
Icy Cape
ALASKA
Point Lay
NR03-06
NR03-05
NR02-06
Proposed Chukchi Sea Sales
212 and 221
Call for Information and Nominations Area
Official Protraction Diagram
Submerged Lands Act Boundary
NR03-07
NR02-08
Wevok
Point Hope
Cape Thompson
0 15 30 60 90 120
Miles
0 25 50 100 150 200
Kilometers



[FR Doc. 07–4134 Filed 8–22–07; 8:45 am]

BILLING CODE 4310–MR–C

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

Notice is hereby given that on August 3, 2007, a proposed Consent Decree in *United States of America, and City of Sterling, Colorado (Plaintiffs)* v. *Aristedes Zavaras, Executive Director, State of Colorado Department of Corrections, Sterling Correctional Facility, and State of Colorado (Defendants),* Civil Action No. 07–CV–01643–MSK–MSW, was lodged with the United States District Court for the District of Colorado.

In this action, the United States and the City of Sterling, Co-Plaintiffs, seek civil penalties and Supplemental Environmental Projects (''SEPs'') for Defendants' discharges of pollutants at the Sterling Correctional Facility in Logan County, Colorado, in violation of sections 301 and 307 of the Act, 33 U.S.C. 1311, 1317, and local ordinance, City of Sterling, Colo., Sewer System Pretreatment Program (''Sterling SSPP''), Chapter 21, Article V, sections 21–201 to 21–222. The Consent Decree addresses the Correctional Facility's violations of its Industrial User Permit issued by the City of Sterling, which owns and operates a publicly owned treatment works (''POTW'') the which Correctional Facility is connected. Under the terms of the Consent Decree, Defendants will pay a civil penalty of $50,000 and perform SEPs valued at $225,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree in the above-captioned case. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611,[1] and should refer to Civil Action No. 07–CV–01643–MSK–MSW, D.J. Ref. 90–5–1–1–08122.

The Sterling CD may be examined at the Office of the United States Attorney, 11225 Seventeenth Street, Suite 700 Seventeenth Street Plaza, Denver, Colorado 80202. It also may be examined at the offices of U.S. EPA—Region 8, 1595 Wynkoop Street, Denver, Colorado 80202. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

A copy of the Consent Decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–4121 Filed 8–22–07; 8:45 am]

BILLING CODE 4410–15–M

[1] Comments should be addressed to the Assistant Attorney General even if the settlement was approved by some other officer of the Department (*e.g.,* Section Chief or Associate Attorney General).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

Notice is hereby given that on August 10, 2007, a proposed Consent Decree (the ''Consent Decree'' in *United States* v. *BFI Waste Systems of North America, Inc. et at.,* Civil Action No. 07 C 4499, was lodged with the United States District Court for the Northern District of Illinois.

In this action the United States sought, pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, injunctive relief and the recovery of cost incurred by the United States in responding to a release or threat of hazardous substances at or from the Wauconda Sand and Gravel Superfund Site (the ''Site'') located in Lake County, Illinois, at or near to the Village of Wauconda. Under the proposed Consent Decree, the settling defendants will complete the connection of over 400 homes to the Village of Wauconda's municipal water works, expand the Village's municipal water works to accommodate the increased demand, perform operation and maintenance at the Site, and conduct groundwater monitoring activities. The proposed Consent Decree also requires the Settling Defendants to pay past and future response costs incurred by the United States relating to the Site. In addition, the proposed Consent Decree also includes a covenant not to sue under sections 106 and 107 of CERCLA and under section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Divisions, and either e-mailed to *pubcomment-ess.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *BFI Waste Systems of North America, Inc. et al.,* D.J. Ref. No. 90–11–2–153/1. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 973(d).

The Consent Decree may be examined at the Office of the United Stated Attorney, 219 South Dearborn Street, Chicago, Illinois 60604, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604. During the public comment period, the Cons net Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $37 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by E-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address. In requesting a copy exclusive of exhibits and defendant's signatures, please enclose a check in the amount of $18.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–4119 Filed 8–22–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department of Justice policy and section 122(d)(2) of the Comprehensive Environmental, Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9622(d)(2), notice is hereby given that on August 9, 2007, a proposed consent decree (''Consent Decree'') in *United States* v. *City of Woodstock*, Civil action No. 3:07–cv–50145, was lodged with the United States District Court for the Northern District of Illinois.

The Consent Decree would resolve CERCLA claims against both defendants named in the complaint—the city of Woodstock and Honeywell International, Inc. (collectively ''Defendants'')—in exchange for payments of (i) $567,000 to reimburse the United States' past response costs incurred related to the remedial actions at the City of Woodstock Municipal Landfill Superfund Site (''Site'') in Woodstock, Illinois, and (ii) $400,000 for natural resource damages. The Consent Decree would also require Defendants to pay the United States' future response costs related to the Site and complete the remedial action at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box No. 7611, Washington, DC 20044–7611, and should refer to *United States* v. *City of Woodstock,* Civil Action No. 3:07–cv–50145, D.J. Ref. 90–11–2–959/1.

The Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Illinois, 308 West State Street, Room 300, Rockford, Illinois 61101, and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604–4590. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $50.75 (203 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy exclusive of appendices and defendants' signatures, please enclose a check in the amount of $10.50 (42 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–4120 Filed 8–22–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Membership of the Senior Executive Service Standing Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's standing members of the Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its 2007 Senior Executive Service (SES) Standing Performance Review Boards (PRBs). The purpose of a PRB is to provide fair and impartial review of SES performance appraisals, bonus recommendations and pay adjustments. The PRBs will make recommendations regarding the final performance ratings to be assigned, SES bonuses and/or pay adjustments to be awarded.

FOR FURTHER INFORMATION CONTACT: Rod Markham, Deputy Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530; (202) 514–4350.

Lee J. Lofthus,

Assistant Attorney General for Administration.

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FRIEDRICH, MATTHEW, COUNSEL TO THE ATTORNEY GENERAL

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MONHEIM, THOMAS A., ASSOCIATE DEPUTY ATTORNEY GENERAL
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[FR Doc. E7–16664 Filed 8–22–07; 8:45 am]
BILLING CODE 4410–AR–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundations, Inc

Notice is hereby given that, on July 25, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. section 4301 *et seq.* (''the Act''), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Elgar Electronics in San Diego, CA has changed its name to Xantrex Technology, Inc.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundations, Inc. filed its original notifications pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on May 8, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 13, 2007 (72 FR 38617).

J. Robert Kramer, II,

Director of Operations, Antitrust Division.

[FR Doc. 07–4129 Filed 8–22–07; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1472]

Meeting of the Federal Advisory Committee on Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is announcing the fall meeting of the Federal Advisory Committee on Juvenile Justice (FACJJ), which will be held in Denver, CO on Sunday and Monday, October, 21 and 22, 2007. (The FACJJ meeting is being held in conjunction with the OJJDP State Relations and Assistance joint training and the DMC Annual Conference, which will also be held in the Adam's Mark Hotel from Tuesday through Saturday, October 23 to 27, 2007.) The meeting times and location of the FACJJ meeting are noted below.

DATES: The schedule of events is as follows:

1. Sunday, October 21, 2007, 3:30 p.m. to 6:30 p.m.

2. Monday, October 22, 2007, 8 a.m. to 5:30 p.m.

Location: All meeting sessions will take place at the Adam's Mark Hotel, 1550 Court Place, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Robin Delany-Shabazz, Designated Federal Official, OJJDP, *Robin.Delany-Shabazz@usdoj.gov*, or 202–307–9963. [**Note:** This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee on Juvenile Justice (FACJJ), established pursuant to section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App.2), will meet to carry out its advisory functions under section 223(f)(2)(C–E) of the Juvenile Justice and Delinquency Prevention Act of 2002. The FACJJ is composed of one representative from each state and territory. FACJJ duties include: Reviewing Federal policies regarding juvenile justice and delinquency prevention; advising the OJJDP Administrator with respect to particular functions and aspects of OJJDP; and advising the President and Congress with regard to State perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention. More information, including a member list, may be found at *http://www.facjj.org.*

Meeting Agenda

1. Sunday, October 21, 2007

3:30 p.m.–6:30 p.m. Registration; Welcome, Review of the Agenda; Discussion of State Best Practices; Preliminary Report of the Responses to the 2007 Request for Information; Overview of the 2008 Annual Report Drafts and Member Assignments (Open Session).

2. Monday, October 22, 2007

8:30 a.m.–9 a.m. Call to Order by the Chair of the FACJJ and Remarks by the Administrator of OJJDP and Instructions for Review of the Annual Report Drafts (Open Session).

9 a.m.–12 p.m. and 2 p.m.–4:45 p.m. Drafting, Deliberation and Reconciliation of Comments on the 2008 Draft Reports to the President, Congress, and the Administrator of OJJDP in Small Group and Plenary Sessions (Open Session).

12 p.m.–1:45 p.m. Subcommittee Meetings and Lunch (Closed Sessions).

1:45 p.m.–2:15 p.m. Subcommittee Report Outs (Open Session).

4:45 p.m.–5:30 p.m. Election of Officers for 2008, Other Business, Closing Remarks and Adjournment (Open Session).

For security purposes, members of the FACJJ and of the public who wish to attend, must pre-register online at *http://www.edjassociates.com/facjj/2007/home.asp.* Should problems arise with web registration, please call Daryel Dunston at 240–221–4343 or send a request to register for the October, 2007 FACJJ meeting to Mr. Dunston. Please include name, title, organization or other affiliation, full address and phone, fax and email information and send to his attention either by fax at: 301–945–4295 or by e-mail to *ddunston@edjassociates.com.* Members of the public must register by Friday, October 12, 2007. [**Note:** these are not toll-free telephone numbers.] Additional identification documents may be required. Space is limited. **Please note:** Photo identification will be required for admission to the meeting.

Written Comments

Interested parties may submit written comments by Friday, October 12, 2007, to Robin Delany-Shabazz, Designated Federal Official for the Federal Advisory Committee on Juvenile Justice, OJJDP, at *Robin.Delany-Shabazz@usdoj.gov.* If e-mail is not available, please fax your comments to 202–354–4063 and call Francesca Stern at 202–616–3551 to ensure that the fax was received. [**Note:** These are not toll-free numbers.] No oral presentations will be permitted at the meeting. However, written questions and comments from members of the public attending the meeting may be invited.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. E7–16636 Filed 8–22–07; 8:45 am]

BILLING CODE 4410–18–P

COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

[OJP (OJJDP) Docket No. 1471]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention (Council) is announcing its September 14, 2007 meeting.

DATES: Friday, September 14, 2007, 8:30 a.m. to 12:30 p.m.

ADDRESSES: The meeting will take place at the U.S. Department of Labor (DOL), 200 Constitution Avenue, NW., 5th floor, C5515 1A & 1B, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Robin Delany-Shabazz, Designated Federal Official, by telephone at 202–307–9963 [**Note:** this is not a toll-free telephone number], or by e-mail at *Robin.Delany-Shabazz@usdoj.gov.*

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention, established pursuant to section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2) will meet to carry out its advisory functions under section 206 of the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601, *et seq.* Documents such as meeting announcements, agendas, minutes, and interim and final reports will be available on the Council's Web page at *http://www.JuvenileCouncil.gov.* (You may also verify the status of the meeting at that Web address.)

Although designated agency representatives may attend, the Council membership is composed of the Attorney General (Chair), the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, and the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement. Up to nine additional members are appointed by the Speaker of the House of Representatives, the Senate Majority Leader, and the President of the United States.

Meeting Agenda

The agenda for this meeting will include: (a) Briefing on the Shared Youth Vision initiative (*http://www.doleta.gov/ryf/*), a discussion on its application to federal agency work in the New Orleans area; and a discussion on next steps; (b) an update on other Council Partnership Projects; (c) a panel presentation from representatives of three faith-based organizations using collaboration to advance the work of their urban ministries; and (d) legislative and program updates; announcements and other business. All sessions are open to the public.

Registration

For security purposes, members of the public who wish to attend the meeting must pre-register online at *http://www.juvenilecouncil.gov/meetings.html.* Should problems arise with web registration, please call Daryel Dunston at 240–221–4343, or send a request to register for the September 14, 2007, Council meeting to Mr. Dunston. Please include name, title, organization or other affiliation, full address and phone, fax and email information and send to his attention either by fax at: 301–945–4295 or by e-mail to *ddunston@edjassociates.com.* Individuals must register no later than Friday, September 7, 2007. [**Note:** these are not toll-free telephone numbers.] Additional identification documents may be required. Space is limited.

Note: Photo identification will be required for admission to the meeting.

Written Comments

Interested parties may submit written comments by Friday, September 7, 2007, to Robin Delany-Shabazz, Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, at *Robin.Delany-Shabazz@usdoj.gov.* The Coordinating Council on Juvenile Justice and Delinquency Prevention expects that the public statements presented will not repeat previously submitted statements. Written questions and comments from the public may be invited at this meeting.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. E7–16634 Filed 8–22–07; 8:45 am]

BILLING CODE 4410–18–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Appointment of Members of Senior Executive Services Performance Review Board

AGENCY: Office of National Drug Control Policy [ONDCP].

ACTION: Notice of appointments.

SUMMARY: The following persons have been appointed to the ONDCP Senior Executive Service Performance Review Board: Mr. Thomas Riley, Ms. Michele Marx, Mr. Robert Denniston, and Mr. Patrick Ward.

FOR FURTHER INFORMATION: Please direct any questions to Linda V. Priebe,

Assistant General Counsel (202) 395–6622, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503.

Linda V. Priebe,

Assistant General Counsel.

[FR Doc. E7–16646 Filed 8–22–07; 8:45 am]

BILLING CODE 3180–02–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Institute of Museum and Library Services; Notice: Proposed Collection, Submission for OMB Review, Museum Survey of Public Support

SUMMARY: The Institute of Museum and Library Services (IMLS) announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the contact section below on or before September 24, 2007.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collocation of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Mary E. Downs, PhD, Research Officer, Institute of Museum and Library Services, 1800 M. Street, NW., 9th Floor, Washington, DC, may be reached by telephone: 202–653–4682; fax: 202–653–8625; or e-mail: *mdowns@imls.gov.*

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, 20 U.S.C. 9101, *et seq.* Section 210 of the Act supports IMLS' data collection and analysis role. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs.

Abstract: Congress has established the Institute of Museum and Library Services as the primary source of federal support for the nation's libraries and museums. Specifically through the Museum Services Act, as cited in the legislation (20 U.S.C. 9171), federal funds are directed to museums:

(1) To encourage and support museums in carrying out their public service role of connecting the whole of society to the cultural, artistic, historical, natural, and scientific understandings that constitute our heritage;

(2) to encourage and support museums in carrying out their educational role, as core providers of learning and in conjunction with schools, families, and communities

(3) to encourage leadership, innovation, and applications of the most current technologies and practices to enhance museum services;

(4) to assist, encourage, and support museums in carrying out their stewardship responsibilities to achieve the highest standards in conservation and care of the cultural, historic, natural, and scientific heritage of the United States to benefit future generations;

(5) to assist, encourage, and support museums in achieving the highest standards of management and service to the public, and to ease the financial burden borne by museums as a result of their increasing use by the public; and

(6) to support resource sharing and partnerships among libraries, schools, and other community organizations.

To achieve the purposes of the Museum Services Act the Institute of Museum and Library Services has established an array of discretionary grant programs administered at the national level. These programs have helped hundreds of museums around the country to better connect with the public they serve, enhance lifelong learning, and conserve tangible objects for future generations.

The Institute of Museum and Library Services, in response to its authority to conduct analyses on the impact and effectiveness of museum and library services (20 U.S.C. Chapter 72, 9108), proposes to assess the effectiveness of the systems that are currently in place to deliver state and federal public funds to museums. Effectiveness will be assessed using the purposes identified in the Museum Services Act.

Current Actions: This notice proposes clearance of the Museum Survey of Public Support. The 60-day notice for ''Assessing the Effectiveness of Various Methods Used to Distribute Funds to U.S. Museums'' was published in the **Federal Register** on June 6, 2007 (FR vol. 72, no. 108, pp. 31351–52.) One comment was received from a group of museum associations and included recommendations that the agency: Identify and study a diversity of approaches that states have used in providing financial and other resources to the museums in their state and to ensure that the study encompasses institutions of all budget sizes and disciplines; gather sound and current data about museums in the U.S., such as number of museums, the museum labor force, and number of visits annually to museums; and consider how the data it collects might help identify trends to inform decision-making by IMLS and the museum community.

OMB Number: N/A.

Agency Number: 3137.

Affected Public: Museums, libraries, State Library Administrative Agencies, institutions of higher education, not-for-profit institutions, library and museum professional associations, Native American tribal governments, State and local governments, appointed and elected officials, school officials and educators, and individuals.

Number of Respondents: 1500.

Frequency: Once.

Burden Hours per Respondent: 3.

Total Burden Hours: 500.

Contact: Comments should be sent to the Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316.

Dated: August 16, 2007.

Barbara G. Smith,

E-Projects Officer.

[FR Doc. E7–16481 Filed 8–22–07; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection: 10 CFR Part 21, ''Reporting of Defects and Noncompliance.''
3. The form number if applicable: Not Applicable.
4. How often the collection is required: On occasion, as necessary in order for NRC to meet its responsibilities to conduct a detailed review of defects in basic components of nuclear power plants or failures to comply that could create a substantial safety hazard.
5. Who will be required or asked to report: All directors and responsible officers of firms and organizations building, operating, or owning NRC licensed facilities as well as directors and responsible officers of firms and organizations supplying basic components and safety related design, analysis, testing, inspection, and consulting services of NRC licensed facilities or activities.
6. An estimate of the number of annual responses: 105 (70 plus 35 recordkeepers).
7. The estimated number of annual respondents: 35.
8. An estimate of the total number of hours needed annually to complete the requirement or request: 7,579 hours (4,970 hours for reporting and 2,609 hours for recordkeeping).
9. An indication of whether section 3507(d), Public Law 104–13 applies: N/A.
10. Abstract: Reports submitted under 10 CFR 21 are reviewed by the NRC staff to determine whether the reported defects or failures to comply in basic components at NRC licensed facilities or activities are potentially generic safety problems.

These reports have been the basis for the issuance of numerous NRC Information Notices, Generic Letters, and Bulletins that have contributed to the improved safety of the nuclear industry.

The records required to be maintained in accordance with 10 CFR 21.51 are subject to inspection by the NRC to determine compliance with the subject regulation. These records fall into four categories: Records relating to evaluations defined by 10 CFR 21.3, records of previously submitted reports pursuant to 10 CFR 21.21, records of procedures required to assure compliance with 10 CFR 21, and procurement documents necessary to ensure that background specifications are available to evaluate potential defects and failures to comply.

Industry organizations, such as the Institute for Nuclear Power Operations (INPO) and the Nuclear Energy Institute (NEI), are urged to share and distribute such information to all affected parties as it becomes available. The NRC further disseminates significant generic information to all affected parties via NRC Information Notices, Generic Letters, and Bulletins, and encourages the elimination of duplicate reporting. Computer databases are used extensively by the NRC and the nuclear industry for tracking these reports.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 24, 2007. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Nathan Frey, Desk Officer, Office of Information and Regulatory Affairs (3150–0035), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted to *Nathan.Frey@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Margaret A. Janney, 301–415–7245.

Dated at Rockville, Maryland, this 16th day of August, 2007.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–16675 Filed 8–22–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–33804]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 37–30211–01, for Unrestricted Release of the Genisphere Facility in Philadelphia, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for license amendment.

FOR FURTHER INFORMATION CONTACT: Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania; telephone 610–337–5366; fax number 610–337–5393; or by e-mail: *drl1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 37–30211–01. This license is held by Genisphere (the Licensee), for the space it leases from the Philadelphia College of Osteopathic Medicine (PCOM) located at 4170 City Avenue in Philadelphia, Pennsylvania (the Facility). Issuance of the amendment would authorize release of the Facility for unrestricted use. The Licensee requested this action in a letter dated March 19, 2007, and responded to an information request by letter dated May 11, 2007. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's March 19, 2007 license amendment request, resulting in release of the Facility for unrestricted use. License No. 37–30211–01 was issued on February 27, 1996, pursuant to 10 CFR Part 30, and has been amended periodically since that time. This license authorizes the Licensee to use unsealed byproduct material in connection with conducting research and development activities on laboratory bench tops and in hoods at this Facility and their facility located at 2801 Sterling Drive, Hatfield, Pennsylvania. The proposed action pertains only to the cessation of licensed activities at the Facility, and the license will thus not be terminated if the proposed action is approved.

The Facility is situated within the eight acre PCOM site and consists of approximately 8,000 square feet of office space and laboratories. The Facility is located in a mixed residential/commercial area. Within the Facility, the radionuclide of concern was hydrogen-3, because of its half-life being greater than 120 days. Use of this licensed material was confined to Rooms 316 and 319 of Evans Hall, an area of approximately 1050 square feet.

In December 2003, the Licensee ceased licensed activities at the Facility, and initiated a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility and seeks the unrestricted use of its Facility.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: Hydrogen-3. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted a final status survey of the Facility on February 19, 2004, but delayed making a final decision about whether or not to resume licensed activities there. The final status survey report was attached to the Licensee's letter dated May 11, 2007. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the Commonwealth of Pennsylvania's Department of Environmental Protection, Bureau of Radiation Protection for review on July 3, 2007. On July 5, 2007, Commonwealth of Pennsylvania's Department of Environmental Protection, Bureau of Radiation Protection responded by electronic mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required

under section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''
2. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''
3. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''
4. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;''
5. Genisphere, Amendment Request Letter dated March 19, 2007 [ML070810465];
6. Genisphere, Deficiency Response Letter dated May 11, 2007 [ML071340235].

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I, 475 Allendale Road, King of Prussia this 16th day of August 2007.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E7–16701 Filed 8–22–07; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #10970; Florida Disaster #FL–00027; Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Florida, dated 08/16/2007.

Incident: Drought.

Incident Period: 04/01/2007 and continuing.

Effective Date: 08/16/2007.

EIDL Loan Application Deadline Date: 05/16/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, 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: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:
Broward, Charlotte, Duval, Lafayette, Lee, Martin, Okeechobee, Palm Beach, and Suwannee.

Contiguous Counties: Florida:
Baker, Clay, Collier, Columbia, Desoto, Dixie, Gilchrist, Glades, Hamilton, Hendry, Highlands, Indian River Madison, Miami-Dade, Nassau, Osceola, Polk, Sarasota, St. Johns, St. Lucie, and Taylor.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 109700.

The State which received an EIDL Declaration # is Florida.

(Catalog of Federal Domestic Assistance Number 59002).

Dated: August 16, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–16716 Filed 8–22–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Privacy Act Systems of Records

AGENCY: Small Business Administration.

ACTION: Notice of new routine use; request for comment.

SUMMARY: The Small Business Administration (SBA) is adding a new routine use to each of the agency's Privacy Act Systems of Records. This new routine use will allow SBA to disclose to appropriate agencies, entities and persons pertinent information for purposes of preventing, minimizing or remedying any harm that may result from a breach of the data maintained in those records.

DATES: Written comments on the new routine use must be received on or before October 9, 2007. The routine use will be effective without further action at the end of the comment period, unless comments received require a contrary determination.

ADDRESSES: Written comments should be directed to Lisa J. Babcock, Chief, Freedom of Information/Privacy Acts Office, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Lisa J. Babcock, Chief, Freedom of Information/Privacy Acts Office, (202) 401–8203.

SUPPPLEMENTARY INFORMATION: On May 22, 2007, the Office of Management and Budget (OMB) issued Memorandum M–07–16, ''Safeguarding Against and Responding to the Breach of Personally Identifiable Information.'' The memorandum includes a recommendation for agencies to adopt a routine use specifically applying to the disclosure of such information in the event of a suspected or confirmed breach. This new routine use is in response to that recommendation and is intended to facilitate timely and effective response in the event of a breach by allowing disclosure to those persons, agencies and entities that are in a position to assist the agency in notifying affected individuals or in preventing, minimizing or remedying harm from the breach.

The Privacy Act requires agencies to publish notice in the **Federal Register** when there is a revision, including addition of routine uses, to an agency's

system of records. *See*, 5 U.S.C. 552a (e)(4) and (11). In accordance with that requirement, this notice also provides the public a 30-day period in which to comment on the new routine use. SBA is also providing the Congress and OMB a 40-day advance notice as required by the Privacy Act. *See*, 5 U.S.C. a(r).

SBA's Privacy Act complete systems of records, which can be viewed on the agency's Web site at: *http://www.sba.gov/aboutsba/sbaprograms/foia/papias/index.html* was last published on September 30, 2004 at 69 FR 58598, and consist of the following:

SBA 1—Administrative Claims.
SBA 2—Administrator's Executive Secretariat Files.
SBA 3—Advisory Council Files.
SBA 4—Office of Inspector General Records Other Than Investigations Records.
SBA 5—Business and Community Initiatives Resource Files.
SBA 6—Civil Rights Compliance Files.
SBA 7—Combined Federal Campaign.
SBA 8—Correspondence and Inquiries.
SBA 9—Cost Allocation Data System.
SBA 10—Employee Identification Card Files.
SBA 11—Entrepreneurial Development—Management Information System.
SBA 12—Equal Employment Opportunity Pre-Complaint Counseling.
SBA 13—Equal Employment Opportunity Complaint Cases.
SBA 14—Freedom of Information/Privacy Act Records.
SBA 15—Grievance and Appeals Files.
SBA 16—Investigative Files.
SBA 17—Investigations Division Management Information System.
SBA 18—Legal Work Files on Personnel Cases.
SBA 19—Litigation and Claims Files.
SBA 20—Disaster Loan Case Files.
SBA 21—Loan System.
SBA 22—Outside Employment Files.
SBA 23—Payroll Files.
SBA 24—Personnel Security Files.
SBA 25—Portfolio Review Files.
SBA 26—Power of Attorney Files.
SBA 27—Security and Investigations Files.
SBA 28—Small Business Persons and Advocate Awards.
SBA 29—Standards of Conduct.
SBA 30—Servicing and Contracts System/Minority Enterprise.
Development Headquarters Repository.
SBA 31—Temporary Disaster Employee Files.
SBA 32—Tort Claims.
SBA 33—Travel Files.
SBA 34—Identity Management System.

SBA will revise these systems of records by adding the following new routine use at the end of the existing routine uses for each system. The text of this routine use is the same as recommended in OMB M–07–16 and is consistent with the text of the routine use already adopted by several agencies, including the Department of Justice, for the same purpose described in this notice.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses

To appropriate agencies, entities, and persons when (1) The Agency suspects or has confirmed that the security or confidentiality of information in the system or records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Agency or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

Dated: August 17, 2007.

Delorice P. Ford,

Assistant Administrator for Hearings and Appeals.

[FR Doc. E7–16697 Filed 8–22–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 5887]

U.S. Department of State Advisory Committee on Private International Law; Notice of Hearing

The U.S. Department of State Advisory Committee on Private International Law will hold a meeting on Monday October 1, 2007 at the Georgetown University Law Center, 600 New Jersey Avenue, NW., Washington, DC. The meeting will be held on the 12th floor of the Gewirz Building, and will start at 9 a.m. and will end at 5:30 p.m. The meeting will discuss the general ''state of the world'' developments in International Private Law, including the areas of investment securities law, computer and e-commerce law, international family law including a new convention on child support, judicial assistance and arbitration, e-apostilles and reports on other Private International Law projects.

The meeting is open to the public up to the capacity of the meeting room. Interested persons are invited to attend and to express their views. Persons who cannot attend, but wish to have their views considered are encouraged to submit written comments in advance. Comments should be sent electronically to *SmeltzerTK@State.gov.* Anyone planning to attend this meeting should provide their name, affiliation and contact information in advance to Trish Smeltzer or Kelly Jones at 202–776–8420 or by e-mail to *JonesKL3@State.gov.*

Dated: August 7, 2007.

Harold S. Burman,

Executive Director, Department of State.

[FR Doc. E7–16682 Filed 8–22–07; 8:45 am]

BILLING CODE 4710–08–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Public Hearing and Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of public hearing and commission meeting.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting beginning at 8:30 a.m. on September 12, 2007 in Binghamton, New York. At the public hearing, the Commission will consider the approval of certain water resources projects and the rescission of one docket approval. Details concerning the projects to be addressed at the public hearing, as well as other matters on the business meeting agenda, are contained in the Supplementary Information section of this notice.

DATES: September 12, 2007.

ADDRESSES: Grande Royale Hotel, 80 State Street, Binghamton, New York. See **SUPPLEMENTARY INFORMATION** section for mailing and electronic mailing addresses for submission of written comments.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423; ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net* or Deborah J. Dickey, Secretary to the Commission, telephone: (717) 238–0423, ext. 301; fax: (717) 238–2436; e-mail: *ddickey@srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below,

the business meeting also includes the following items on the agenda: (1) A panel session regarding New York State's involvement in the Chesapeake Bay Program; (2) a report on the present hydrologic conditions of the basin; (3) approval of a proposed rule making action to amend certain provisions of 18 CFR Part 806 related to agricultural consumptive water use; and (4) various contract and grant approvals.

Public Hearing—Projects Scheduled for Action

1. *Project Sponsor and Facility:* Town of Erwin (Wells 2 and 3, and ID Well 1), Steuben County, NY Modification of groundwater approval (Docket No. 20070602).

2. *Project Sponsor:* South Slope Development Corporation. Project Facility: Song Mountain Ski Resort, Town of Preble, Cortland County, NY Applications for surface water withdrawal of 3.705 mgd, groundwater withdrawal of 0.960 mgd, and consumptive water use of up to 0.815 mgd.

3. *Project Sponsor:* AES Westover, LLC. Project Facility: AES Westover Generating Station, Town of Union, Broome County, NY Applications for surface water withdrawal of 97.300 mgd and consumptive water use of up to 2.067 mgd.

4. *Project Sponsor and Facility:* Town of Cohocton (Well 3), Village of Cohocton, Steuben County, NY Modification of groundwater withdrawal approval (Docket No. 19990703).

5. *Project Sponsor:* Northampton Fuel Supply Company, Inc. *Project Facility:* Loomis Bank Operation, Hanover Township, Luzerne County, Pa. Modification of consumptive water use approval (Docket No. 20040904).

6. *Project Sponsor:* PPL Susquehanna, LLC. *Project Facility:* Susquehanna Steam Electric Station, Salem Township, Luzerne County, Pa. Approval of groundwater and surface water withdrawals of 66.000 mgd, and modification of consumptive water use approval (Docket No. 19950301).

7. *Project Sponsor:* Bionol Clearfield LLC. *Project Facility:* Bionol-Clearfield, Clearfield Borough, Clearfield County, Pa. Applications for surface water withdrawal of 2.505 mgd and consumptive water use of up to 2.000 mgd.

8. *Project Sponsor and Facility:* Walker Township Water Association (Snydertown Well 3), Walker Township, Centre County, Pa. Application for groundwater withdrawal of 0.860 mgd.

9. *Project Sponsor and Facility:* Bedford Township Municipal Authority (Bowman Tract Wells 1 and 2), Bedford Township, Bedford County, Pa. Modification of groundwater withdrawal approval (Docket No. 19990502).

10. *Project Sponsor:* Charles Header. *Project Facility:* Laurel Springs Development, Barry Township, Schuylkill County, Pa. Applications for groundwater withdrawal of 0.099 mgd and consumptive water use of up to 0.099 mgd.

11. *Project Sponsor and Facility:* Dillsburg Area Authority (Well 7), Carroll Township, York County, Pa. Application for groundwater withdrawal of 0.360 mgd.

12. *Project Sponsor:* PPL Brunner Island, LLC. *Project Facility:* Brunner Island Steam Electric Station, East Manchester Township, York County, Pa. Applications for surface water withdrawal of 835.000 mgd and consumptive water use of up to 12.100 mgd.

Public Hearing—Project Scheduled for Rescission Action

1. *Project Sponsor:* Northampton Fuel Supply Company, Inc. (Docket No. 20040903). *Project Facility:* Prospect Bank Operation, Plains Township, Luzerne County, Pa.

Opportunity To Appear and Comment

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102–2391, or submitted electronically to Richard A. Cairo, General Counsel, e-mail: *rcairo@srbc.net* or Deborah J. Dickey, Secretary to the Commission, e-mail: *ddickey@srbc.net.* Comments mailed or electronically submitted must be received prior to September 12, 2007 to be considered.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.*, 18 CFR Parts 806, 807, and 808

Dated: August 14, 2007.

Thomas W. Beauduy,

Deputy Director.

[FR Doc. E7–16662 Filed 8–22–07; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Sanford Regional Airport, Sanford, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: The FAA is requesting public comment on the Town of Sanford, Maine's, request to convey approx. 2.58 acres of Airport property from aeronautical use of non-aeronautical use. The property is located on Gatehouse Road, Sanford, Maine. York County Registry of Deeds, book/page/date 1113/303 12/30/47 & 1116/1 7/15/48. The property was acquired under AIP Project No. 3–23–0044–20. In exchange the airport will receive 2.9 acres of land for aeronautical purposes.

The disposition of proceeds from the disposal of airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

DATES: Comments must be received on or before September 24, 2007.

ADDRESSES: Documents are available for review by appointment by contacting Evan McDougal, Airport Manager at Sanford Regional Airport, Telephone 207–432–0596 or by contacting Tracey McInnis, Federal Aviation Administration, 16 New England Executive Park, Burlington, Massachusetts, Telephone 781–238–7621.

FOR FURTHER INFORMATION CONTACT: Tracey McInnis at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone 781–238–7621.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) requires the FAA to provide an opportunity for public notice and comment to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport property for aeronautical purposes.

Issued in Burlington, Massachusetts, on August 9, 2007.

LaVerne F. Reid,

Manager, Airports Division, New England Region.

[FR Doc. 07–4124 Filed 8–22–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to the proposed U.S. 395 Independence Roadway Improvement Project in the vicinity of the town of Independence from 4.3 kilometers (2.7 miles) south of Mazourka Canyon Road to 0.6 kilometer (0.4 mile) north of Shabbell Lane in Inyo County, State of California. Those actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 19, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Dominic Hoang, Project Development Engineer, FHWA, 650 Capitol Mall, #4–100, Sacramento, CA 95814; weekdays 7 a.m. to 4 p.m. (Pacific time); telephone (916) 498–5002; e-mail: *dominic.hoang@fhwa.dot.gov*. Juergen Vespermann, Senior Environmental Planner, California Department of Transportation (Caltrans), 2015 E. Shields Avenue, #100, Fresno, CA 93726; weekdays 7 a.m. to 4 p.m. (Pacific time); telephone (559) 243–8157; e-mail: *juergen_vespermann@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following highway project in the State of California. The Independence Roadway Improvement Project would increase capacity to meet present and future traffic demands, improve safety and the flow of traffic, and provide route continuity. This would be accomplished by widening U.S. 395 from a two-lane highway to a four-lane controlled access expressway (except through Independence) from KP 113.1 to 122.5 (PM 70.3/76.1) in the vicinity of the town of Independence in Inyo County. The actions by the Federal agencies and the laws under which such actions were taken are described in the Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for the project, approved on June 22, 2004, and in other documents in the FHWA administrative record. The EA/FONSI and other documents are available by contacting FHWA or Caltrans at the addresses provided above. The FHWA EA/FONSI can be viewed and downloaded from the project Web site at: *http://www.dot.ca.gov/dist9/projmgt/Inyo_projects/21480/IndependenceFED.pdf*.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; and Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].
3. Land: Landscape and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].
4. Wetlands and Water Resources: Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, section 401, Section 319); Wetlands Mitigation [23 U.S.C. 103(b)(6)(m) and 133(b)(11)]; Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Flood Disaster Protection Act, 42 U.S.C. 4001–4128; and Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)].
5. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; and Migratory Bird Treaty Act [16 U.S.C. 703–712].
6. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469c]; Archaeological Resources Protection Act of 1979 [16 U.S.C. 470 *et seq*]; and Native American Graves Protection and Repatriation Act [25 U.S.C. 3001–3013].
7. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act [7 U.S.C. 4201–4209]; American Indian Religious Freedom Act [42 U.S.C. 1996]; and The Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.
8. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986; and Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].
9. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O.12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of the Cultural Environment; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; and E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: August 16, 2007.

Maiser Khaled,

Director, Project Development & Environment, Sacramento, California.

[FR Doc. E7–16666 Filed 8–22–07; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking approval of the following information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than October 22, 2007.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Gina Christodoulou,

Office of Support Systems Staff, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–New.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov,* or to Ms. Christodoulou at *gina.christodoulou@dot.gov.* Please refer to the assigned OMB control number or collection title in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Gina Christodoulou, Office of Support Systems Staff, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of proposed new information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Work Schedules and Sleep Patterns of Train and Engine Service Employees

OMB Control Number: 2130–New.

Abstract: In a continuing effort to improve rail safety and to reduce the number of injuries and fatalities to rail workers, the issue of fatigue has received considerable attention from both FRA and the railroad industry. One of FRA's fatigue-related activities has been a series of studies designed to document and characterize the work/rest schedules and sleep patterns in signalmen, maintenance-of-way workers, and dispatchers. These studies used the methodology approved by the Office of Management and Budget (OMB), including random selection of participants to ensure a representative sample of each group. FRA has not yet collected data from two critically important labor crafts whose work schedules are regulated by FRA, locomotive engineers and conductors.

FRA is proposing a study that will focus on train and engine service employees, which consists of locomotive engineers, conductors, remote control operators, and switchmen. FRA seeks to develop an understanding of the work schedule-related fatigue issues that affect these operating crafts. The project will be very similar in both method and scope to the recently completed studies of railroad signalmen, maintenance of way employees, and dispatchers. The FRA proposes to undertake this study to develop an understanding of the work schedule-related fatigue issues for train and engine service employees.

The proposed study has two primary purposes:

- To document and characterize the work/rest schedules and sleep patterns of train and engine service employees.
- To examine the relationship between these schedules and level of alertness/fatigue for the individuals who work these schedules.

The intent is to report results in aggregate, not by railroad.

Subjective ratings from participants of their alertness/sleepiness on both work and non-work days will be an integral part of this study. The data will be collected through the use of a daily diary or log, as well as a brief background questionnaire for each participant. Analysis of the diary data will allow the FRA to assess the extent of any work-related fatigue issues for train and engine service employees. The proposed study will provide a defensible and definitive estimate of the work/rest cycle parameters and fatigue in train and engine service employees that will inform future FRA regulatory policy and action.

Form Number(s): FRA F 6180.127; FRA F 6180.128.

Affected Public: Railroad Workers.

Respondent Universe: 340 Train and Engine Service Employees.

Frequency of Submission: On occasion.

Reporting Burden:

Form No.	Respondent universe	Total annual responses	Average time per response (in minutes)	Total annual burden hours	Total annual burden cost
Form FRA F 6180.127—Surveys.	340 Train & Engine Service Employees.	340 surveys	15	85	$3,570
Form FRA F 6180.128—Daily Log.	340 Train & Engine Service Employees.	4,760 Log Entries	10	793	33,306

Estimated Annual Burden: 878 hours.

Status: Regular review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on August 17, 2007.

D.J. Stadtler,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E7–16638 Filed 8–22–07; 8:45 am]

BILLING CODE 4910–06–P

Federal Register

Thursday,
August 23, 2007

Part II

Department of Homeland Security

Bureau of Customs and Border Protection

19 CFR Parts 4 and 122; 6 CFR Part 5
Advance Electronic Transmission of Passenger and Crew Member Manifests for Commercial Aircraft and Vessels; Final Rule

Privacy Act of 1974: Customs and Border Protection Advanced Passenger Information System of Records; Notice

Privacy Act of 1974: Implementation of Exemptions; Advanced Passenger Information System; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Parts 4 and 122

[USCBP–2005–0003; CBP Dec. 07–64]

RIN 1651–AA62

Advance Electronic Transmission of Passenger and Crew Member Manifests for Commercial Aircraft and Vessels

AGENCY: Customs and Border Protection, DHS.

ACTION: Final rule.

SUMMARY: This rule adopts as final, with the modifications set forth in this document, proposed amendments to Customs and Border Protection (CBP) regulations concerning electronic manifest transmission requirements relative to travelers (passengers, crew members, and, in some instances, non-crew members) onboard international commercial flights and voyages arriving in and departing from the United States. The rule is designed to enhance national security and the level of security provided under the regulations for the commercial air and sea travel industries, and consequently increase national security in general. The rule also implements the Intelligence Reform and Terrorism Prevention Act of 2004, which requires that electronic manifest information for passengers onboard commercial aircraft arriving in and departing from the United States, and passengers and crew onboard arriving and departing commercial vessels (with certain exceptions), be vetted by DHS against a government-established and maintained terrorist watch list prior to departure of the aircraft or vessel.

Under this final rule, there are three options for air carriers to transmit manifest data for aircraft departing from or en route to the United States: Transmission of passenger manifests in batch form by an interactive method no later than 30 minutes prior to the securing of the aircraft doors (APIS 30); transmission of individual passenger manifest information as each passenger checks in for the flight, up to, but no later than, the time the flight crew secures the aircraft doors (APIS interactive Quick Query or AQQ); and transmission of passenger manifests in batch form by a non-interactive method no later than 30 minutes prior to the securing of the aircraft doors (APIS 30 ''non-interactive'').

For sea travel, CBP will require vessel carriers to transmit passenger and crew manifests for vessels departing from the United States no later than 60 minutes prior to departure. For vessels departing from foreign ports destined to arrive at a U.S. port, CBP is retaining the current requirement to transmit passenger and crew arrival manifest data at least 24 hours and up to 96 hours prior to the vessel's entry at the U.S. port of arrival.

DATES: *Effective Date:* February 19, 2008.

FOR FURTHER INFORMATION CONTACT: Robert Neumann, Program Manager, Office of Field Operations, Bureau of Customs and Border Protection (202–344–2605).

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations

The following acronyms and abbreviations are used throughout this document:

APIS: The Advance Passenger Information System; the electronic data interchange system approved by CBP for air carrier transmissions (to CBP) of electronic passenger, crew member, and non-crew member manifest data.

APIS 30: This refers to the two electronic batch passenger manifest transmission options available to air carriers under this final rule, one of which is interactive and the other of which is not; both are so named because the batch passenger manifest must be transmitted under either option no later than 30 minutes prior to the securing of the aircraft (defined below).

APIS 60: This refers to the two electronic batch passenger manifest transmission options proposed in the NPRM, one of which was interactive and the other of which was not; both were so named because it was proposed (but not adopted in this final rule) that the batch passenger manifest be transmitted under either option no later than 60 minutes prior to the aircraft's push-back from the gate. This term can also apply to the transmission process for commercial vessels departing from the United States, provided for in this final rule to require passenger and crew manifest transmissions 60 minutes prior to departure.

AQQ: APIS Quick Query, an interactive electronic transmission functionality for transmitting required individual passenger manifest data to CBP through APIS.

ATSA: Aviation and Transportation Security Act (2001).

CBP: Bureau of Customs and Border Protection.

DHS: Department of Homeland Security.

eAPIS: CBP Internet functionality for air carriers making required APIS transmissions to CBP.

eNOA/D: Refers to U.S. Coast Guard (USCG) Internet functionality available to vessel carriers for making required APIS transmissions to CBP and required Notice of Arrival transmissions to the USCG.

EBSVERA: Enhanced Border Security and Visa Entry Reform Act of 2002.

INS: Immigration and Naturalization Service.

IRTPA: Intelligence Reform and Terrorism Protection Act of 2004.

OCS: Outer Continental Shelf (of the United States).

OMB: Office of Management and Budget.

PIA: Privacy Impact Analysis.

SORN: System of Records Notice; a notice required to be published in the **Federal Register** under the Privacy Act (5 U.S.C. 552a) concerning a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

TRIP: Travelers Redress Inquiry Program; a DHS program for individuals who have inquiries or seek resolution regarding difficulties they experienced during their travel screening at transportation hubs.

TSA: Transportation Security Administration, DHS.

TSC: Terrorist Screening Center, Department of Justice.

UN/EDIFACT: United Nations Electronic Data Interchange For Administration, Commerce, and Trade.

USCG: U.S. Coast Guard, DHS.

US/EDIFACT: United States Electronic Data Interchange For Administration, Commerce, and Trade.

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I. Background and Purpose

On July 14, 2006, CBP published a notice of proposed rulemaking (NPRM or proposed rule) in the **Federal Register** (71 FR 40035) proposing amendments to CBP regulations concerning the advance electronic transmission of passenger manifests for commercial aircraft arriving in and departing from the United States, and of passenger and crew manifests for commercial vessels departing from the United States. The proposed rule also solicited public comments. An economic analysis of the rule was made available to the public at *http://www.regulations.gov* (under docket number USCBP–2005–0003). This final rule discusses the comments received by CBP on the proposed rule and adopts the proposed amendments as final, with the modifications explained further below.

A. Advance Passenger Information System

The Advance Passenger Information System (APIS) is a widely-utilized electronic data interchange system approved by CBP. APIS is used by international commercial air and vessel carriers to transmit electronically to CBP certain data on passengers and crew members. APIS often will be referred to as ''the CBP system'' in this document to reflect transmissions of information to and from CBP.

APIS was developed by the former U.S. Customs Service (Customs) in 1988, in cooperation with the former Immigration and Naturalization Service (INS) and the airline industry. As a voluntary program, APIS was widely used, making it nearly an industry standard. After a period of voluntary participation, the Federal government implemented requirements governing the advance electronic transmission of passenger and crew member manifests for commercial aircraft and commercial vessels in accordance with several statutory mandates. These mandates include, but are not limited to: Section 115 of the Aviation and Transportation Security Act (ATSA), Public Law 107–71, 115 Stat. 597; 49 U.S.C. 44909 (applicable to passenger and crew manifests for flights arriving in the United States); section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (EBSVERA), Public Law 107–173, 116 Stat. 543; 8 U.S.C. 1221 (applicable to passenger and crew manifests for flights and vessels arriving in and departing from the United States); and CBP's general statutory authority under 19 U.S.C. 1431 and 1644a (requiring manifests for vessels and aircraft).

The Transportation Security Administration (TSA) also regulates the security of, among others, certain U.S. aircraft operators (49 CFR part 1544) and foreign air carriers (49 CFR parts 1546 and 1550) that conduct passenger and all-cargo operations to, from, within, and overflying the United States. In addition to these regulations, TSA has implemented detailed security requirements tailored for specific sectors of the transportation industry that are implemented through security programs, Security Directives (SDs), [1] and Emergency Amendments (EAs). *See, e.g.,* 49 CFR 1544.305, 1546.105, 1550.5. Under certain SDs and EAs now in effect, TSA requires the advance submission of crew member and non-crew member manifest information for certain flights operating to, from, continuing within, and overflying the United States.

A more detailed description of the legal authorities for DHS to collect advance passenger manifest information is set forth in a final rule issued by CBP on April 7, 2005 (70 FR 17820) (the 2005 APIS Final Rule), establishing CBP's current APIS regulations. See 19 CFR 4.7b, 4.64, 122.49a–122.49c, 122.75a, and 122.75b. The 2005 APIS Final Rule also amended the APIS regulations to incorporate the requirement pertaining to electronic manifest transmissions for passengers and crew onboard vessels and aircraft arriving in and departing from the United States (8 CFR 231.1 and 231.2, respectively). See also 8 CFR 217.7 (pertaining to the electronic data transmission requirement and the Visa Waiver Program).

Under APIS, CBP requires air carriers and vessel carriers to collect and transmit information that consists primarily of information that appears on the biographical data page of travel documents, such as passports issued by governments worldwide. Many APIS data elements (such as name, date of birth, gender, country of citizenship, passport or other travel document information) routinely have been collected over the years by a country's government, when a traveler seeks entry into that country, by requiring the traveler to present a government-issued travel document containing that information. Today, CBP uses this biographical data to perform enforcement and security queries against various multi-agency law enforcement and terrorist databases in connection with, as appropriate, international commercial flights to, from, continuing within, and overflying the United States and international commercial vessel voyages to and from the United States.

For commercial air travel, CBP currently requires air carriers to electronically transmit passenger arrival manifests to CBP no later than 15 minutes after the aircraft's departure from any place outside the United States (§ 122.49a(b)(2)), and passenger departure manifests no later than 15 minutes prior to departure of the aircraft from the United States (§ 122.75a(b)(2)). Manifests for crew members on passenger and all-cargo flights and non-crew members on all-cargo flights must be electronically transmitted to CBP no later than 60 minutes prior to the departure of any covered flight to, continuing within, or overflying the United States (§ 122.49b(b)(2)), and no later than 60 minutes prior to the departure of any covered flight from the United States (§ 122.75b(b)(2)).

For commercial sea travel, CBP currently requires vessel carriers to electronically transmit arrival passenger and crew member manifests at least 24 hours (for voyages of fewer than 24 hours), and up to 96 hours (for voyages of 96 or more hours), prior to the vessel's entry at a U.S. port or place of destination, depending on the length of the voyage (for voyages of 24, but less than 96 hours, transmission must be prior to departure of the vessel from any place outside the United States). See § 4.7b(b)(2). A vessel carrier also must electronically transmit passenger and crew member departure manifests to CBP no later than 15 minutes prior to the vessel's departure from the United States. See § 4.64(b)(2).

CBP currently requires that manifest information for passengers, crew members, and non-crew members, as appropriate, be electronically transmitted for these aircraft and vessel arrivals and departures, and for crew and non-crew member manifest information for flights continuing within and overflying the United States. These regulations serve to provide the nation, the carrier industries, and the international traveling public, with additional security from the threat of terrorism.

[1] Security programs, SDs and EAs generally contain sensitive security information under 49 CFR 1520.5(b)(2) and thus are not disclosed to the general public.

B. Rationale for Change

1. Continued Threat of Terrorist Attacks Affecting Commercial Travel

DHS's primary impetus for this rulemaking initiative is to respond to the continuing terrorist threat facing the United States, the international trade and transportation industries, and the international traveling public. The proposed rule referenced several terrorist incidents to demonstrate the longstanding and continued nature of the threat, including terrorist hijackings of commercial aircraft in the 1970s, the thwarted plot to explode 12 commercial airliners over a 48-hour period in 1996, instances where credible intelligence resulted in numerous flight delays and cancellations during the 2003 holiday season, and repeated intelligence-generated security alerts, including an alert identifying a threat to Washington, DC, and New York City leading up to the 2004 Presidential election. The NPRM also mentioned past terrorist attacks against passenger vessels to demonstrate the wide range of possible targets that may be chosen by terrorists. Terrorist attacks on rail systems in Madrid and London in 2004 and 2005, further demonstrate the continued threat of terrorism to commercial travel. More recently, in August 2006, shortly after the July 14, 2006, publication of the proposed rule, U.S. and British law enforcement and intelligence agencies exposed a terrorist bomb plot in England involving a threat to several U.S.-bound flights by London-based terrorists intending to use common liquid materials to construct a bomb onboard aircraft. These incidents underscore the need to continue to review and revise travel and transportation-related security programs and systems. And terrorists threaten not only human life, but the economic well-being of the commercial air and vessel carrier industries—industries of great importance to the United States and world economies.

The current system—which requires transmission of information only after departure for flights en route to the United States—has resulted in costs to industry. Several times since Fall 2004, identification of a high-risk passenger by DHS after departure of an aircraft en route to the United States has resulted in the diversion of the aircraft to a different U.S. port, or a ''turnback'' to the port of departure. While necessary to safeguard both national security and the passengers on an aircraft or vessel, these measures are costly to the affected carriers.

To address these legitimate threats of terrorism and enhance national security, DHS and the air and vessel carrier industries, under the governing statutes and regulations, are required to take steps to alleviate the risks and protect these vital industries and the public.

2. IRTPA

On December 17, 2004, the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, 118 Stat. 3638, was enacted. Sections 4012 and 4071 of IRTPA require DHS to issue a notice of proposed rulemaking to establish procedures to allow for pre-departure vetting of passengers onboard aircraft, and passengers and crew onboard vessels, bound for and departing from the United States. IRTPA's goal is ensuring that potential terrorists are targeted prior to departure of the aircraft or vessel.

Congress, in enacting IRTPA, expressly recognized the need to fully perform vetting of manifest information prior to the departure of commercial aircraft and vessels traveling to and from the United States. Section 4012(a)(2) of IRTPA directs DHS to issue a rule providing for the collection of passenger information from international flights to or from the United States and comparison of such information by DHS with a consolidated terrorist watch list maintained by the Federal government before departure of the aircraft. Section 4071(1) of IRTPA requires DHS to compare vessel passenger and crew information with information from the consolidated terrorist watch list before departure of a vessel bound for or departing from the United States. In accordance with IRTPA, DHS will use the consolidated terrorist watch list of known and suspected terrorists maintained by the Terrorist Screening Center (TSC) of the Department of Justice (DOJ) to vet passengers and crew members traveling on flights to and from the United States and on vessels departing from the United States.

The IRTPA mandates that DHS collect manifest information in sufficient time to ensure that the Federal government can perform security analysis and take appropriate action prior to the departure of aircraft and vessels. To meet this requirement, CBP must amend its current APIS regulations. Accordingly, CBP, under this final rule, will collect and vet required APIS data before passengers board aircraft bound for or departing from the United States. For sea travel, CBP will collect and vet passenger and crew data earlier than is permitted under existing regulations for vessels departing from the United States, in order to increase our ability to detect high-risk persons before they can perpetrate a terrorist act.

Security is an ongoing process. Through this final rule, CBP establishes new requirements for the pre-departure transmission of traveler and crew data. These requirements will serve as a layer of protection against high-risk travelers while facilitating lawful travel.

II. Discussion of the Final Rule

On July 14, 2006, CBP published its NPRM in the **Federal Register** (71 FR 40035) proposing to amend APIS regulations concerning aircraft bound for and departing from the United States and vessels departing from the United States. The preamble of the proposed rule sets forth various discussions regarding the proposed amendments, the background and purpose thereof, and the proposed manifest data transmission and security vetting process. DHS recommends reading that publication for a more detailed discussion and description of the proposed amendments.

A. Air Carrier Requirements

1. Change Regarding Definition of ''Departure'' for Aircraft

In the NPRM, CBP proposed to change the definition of ''departure'' of an aircraft from ''wheels-up,'' (e.g. the moment the landing gear is retracted into the aircraft immediately after takeoff and the aircraft is en route directly to its destination) to ''push back'' (e.g. the moment the aircraft leaves the gate). This definition is important because a carrier's obligation to transmit data to CBP has been tied to departure.

CBP initially believed that redefining ''departure'' as noted above, and instituting earlier manifest transmission time requirements tied to that definition, would resolve these problems and provide sufficient time for effective vetting of aircraft passengers prior to departure. Thus, CBP proposed that ''departure'' for aircraft should be defined to occur the moment the aircraft pushes back from the gate, a point in the process closely proximate to the moment when the doors are closed on the aircraft. CBP subsequently determined, however, that some flights covered by the APIS regulations never ''push back'' from a gate prior to departure. Therefore, CBP is not redefining ''departure'' in this final rule; instead, CBP is adopting ''securing of the aircraft,'' or the moment the aircraft's doors are closed and secured for flight, as the touchstone for transmitting information to CBP. See § 122.49a(a).

2. Manifest Transmission Options

The proposed rule explains some of the security risks of high-risk and potentially high-risk passengers boarding an aircraft before they have been fully vetted. Such a passenger might have the opportunity to plant or retrieve a disassembled improvised explosive device or other weapon, the detonation of which could have grave consequences in loss of life, damage to aircraft and airport infrastructure, and economic harm to the airline industry and the U.S. and world economies in general. Once on board, a terrorist or terrorists could attempt to hijack or otherwise take over the aircraft with potentially devastating effect. To address this risk, the NPRM proposed a system that would enable CBP to prevent the boarding of a high-risk passenger, while providing options for air carriers to transmit manifest information in a manner suited to their operations.

The NPRM proposed three options for transmitting required manifest data, two that employ an interactive process and one employing a non-interactive process: (1) Transmitting complete manifests in batch form no later than 60 minutes prior to departure of the aircraft (APIS interactive batch or APIS 60); (2) transmitting passenger data as each passenger checks in for the flight, up to but no later than 15 minutes prior to departure (APIS interactive Quick Query or AQQ); and (3) transmitting passenger manifests in batch form no later than 60 minutes prior to departure by means of a non-interactive method (APIS 60 ''non-interactive'').[2] These three options remain in the final rule with modification concerning the timing of transmissions. CBP has changed the timing for transmission of passenger data to require transmission of APIS batch submissions—both interactive and non-interactive—no later than 30 minutes prior to the securing of the aircraft doors, and the transmission of data by APIS AQQ up until the time the aircraft doors are secured by flight crew. (Accordingly, APIS 60 is now referred to as APIS 30 for both interactive and non-interactive batch options). CBP determined that the change from 60 minutes to 30 is possible as a result of system improvements developed during the period of heightened alert after the August 2006 failed London bombing plot.

Although the APIS regulations, under this final rule, will require transmission of passenger manifest data for air carriers no later than 30 minutes before securing the aircraft's doors for batch transmissions, and up to the time the aircraft's doors are secured for AQQ transmissions, CBP also encourages air carriers to transmit manifest information, if available, as soon as possible and up to 72 hours before the scheduled flight. While this early transmission is not mandatory under this final rule, early transmission would provide greater flexibility to CBP in vetting the information. This timing also is consistent with the timing under consideration by TSA in the development of its Secure Flight program. At their discretion, carriers could begin making transmissions up to 72 hours prior to scheduled departure under this final rule, which would—if the 72-hour requirement in the Secure Flight rule becomes final—allow carriers to avoid making a second set of system adjustments to comply with the Secure Flight program's second phase pertaining to international flights. Advance transmissions will enable earlier vetting by CBP and earlier issuance of boarding passes by carriers if warranted by vetting results, relieving the pressure that a high volume of later-transmitted data could have on the carriers' operations. DHS believes that earlier transmissions, though not required, would be to the carriers' advantage and encourages carriers to adopt it as a best business practice. TSA has published a proposed rule for the Secure Flight program in this edition of the **Federal Register**.

The two interactive transmission options allow carriers to electronically receive return messages from CBP in real time. This is an improvement over the current APIS manifest transmission process, in which CBP's communications with carriers are by telephone or email. These real-time return messages can be sent to the carrier within seconds (in AQQ) or within a minute or two (in batch transmission) of the CBP system's receipt of passenger manifests or passenger manifest data. Under the AQQ option, return messages may be received at the carrier's check-in counter.

Either interactive option will require a modification to a participating carrier's electronic transmission system. Therefore, before commencing operation of the interactive system and transmitting manifest information in accordance with either interactive option, a carrier must be certified by CBP, i.e., CBP will test the carrier's system and certify it as presently capable of operating as required. (CBP notes that in the event of a system outage, carriers would use an alternative communication procedure, regardless of which manifest transmission option the carrier employed.)

Under this final rule, carriers choosing not to employ one of the interactive transmission options will transmit passenger manifests in batch form no later than 30 minutes prior to securing the doors by means of a non-interactive method. This option is now referred to as the ''APIS 30 non-interactive'' option. Because these carriers do not have to modify their transmission systems, they will not require CBP certification.

The interactive options are likely to be adopted by large carriers and most of these carriers are expected to employ the AQQ option (or both AQQ and APIS interactive batch).[3] Small carriers that transport significantly fewer international air passengers are likely to use the APIS 30 non-interactive option.

The manifest transmission and security vetting process set forth in the NPRM has been modified in this final rule, in part to reflect a more specific description of the various steps involved and to show more precisely the roles of DHS's component agencies CBP and TSA, as the government assumes the vetting function for APIS purposes (currently performed by the air carriers). We note that the watch list vetting process for international flights, in which CBP currently plays a major role under existing APIS regulations, will be assumed eventually by TSA, while, after this transition, CBP will continue to require complete APIS transmissions by applicable deadlines to support its traditional customs, immigration, and border enforcement/security purposes. (TSA's role as a partner in this APIS process under this final rule should not be confused with TSA's Secure Flight program, now in development, for vetting domestic flights and for assuming, at a later time, the vetting function for international flights.)

The APIS data transmission/security vetting process under this final rule is a joint CBP/TSA operation, since it combines data collection under the CBP APIS regulations through the CBP system; initial, automatic vetting of data by the CBP system; and the further, manual vetting by TSA analysts of data

[2] As discussed in the proposed rule, carriers might elect not to employ an interactive method because of the cost of modifying their transmission systems or because their particular operations are not well suited to interactive communication. Such carriers are typically unscheduled air carrier operators, such as seasonal charters, air taxis, and air ambulances, that currently employ eAPIS (Internet method) for manifest data transmission.)

[3] Large carriers are responsible for transporting over 95% of all international air passengers involving arrivals at or departures from a U.S. port.

related to passengers identified as high-risk (''not-cleared'') during initial vetting. TSA is assisted in the further vetting process by the TSC and, in some circumstances, by other Federal security/law enforcement agencies, such as the Federal Bureau of Investigation (FBI). The process involves the air carrier's transmission of passenger APIS data to the CBP system no later than a specific deadline prior to departure as specified in the final rule (but, as discussed above, transmission of data as early as 72 hours prior to scheduled departure is encouraged as a best business practice). The process also involves initial, automated vetting of the data against the No-Fly and Selectee watch lists by the CBP system, and a quick response by the CBP system, sending the initial vetting result for each passenger to the carrier as either a ''cleared, ''not-cleared,'' or ''selectee'' message. Together, the No-Fly and Selectee watch lists contain data on known and suspected terrorists, and persons involved in, and suspected of involvement in, terrorist activities. Passenger data that matches or possibly matches data on the No-Fly list will generate a ''not-cleared'' response from the CBP system. An inadequate passenger record of transmitted APIS data that cannot be properly vetted will also generate a ''not-cleared'' response. Passenger data that matches or possibly matches data on the Selectee watch list will generate a ''selectee'' response from the CBP system.

The message returned to the carrier by the CBP system, upon completion of the initial vetting, determines what action the carrier will take with respect to each passenger: the carrier will not issue a boarding pass to, or board, any passenger generating a ''not-cleared'' instruction; the carrier will identify a ''selectee'' passenger for secondary screening (typically, a further examination of the passenger's person and/or baggage), in accordance with applicable TSA requirements; and the carrier will be required to retransmit corrected data or transmit new data relative to a passenger generating a ''not-cleared'' instruction due to incomplete/inadequate data. A ''selectee'' passenger is issued a boarding pass with an instruction that secondary screening is required.

CBP then forwards the data related to a passenger generating a ''not-cleared'' response to TSA for further analysis to confirm matches and resolve false positives. At the same time, the carrier will immediately contact TSA to seek resolution of the ''not-cleared'' message by providing additional information, if necessary. Where the further vetting of ''not-cleared'' passengers results in such passengers being cleared for boarding or in being identified instead as ''selectees,'' TSA will contact the carrier with appropriate notification.

(a) Vetting Response Messages and Secondary Screening of ''Selectee'' Passengers

This final rule modifies the proposed rule to specify that a ''selectee'' vetting result also will be sent to the carriers by the CBP system regardless of the transmission option chosen by the carrier and that, in accordance with applicable TSA requirements, ''selectee'' passengers will be subject to secondary screening before entering the secure area.

(b) Connecting Passengers

Unlike the proposed rule, the regulatory texts of this final rule include a reference to connecting passengers with boarding passes whose APIS data has not been collected by the responsible carrier and vetted by the CBP system when they arrive at the connecting airport. The applicable provisions of the regulation (the interactive batch and AQQ provisions), as amended in this final rule, specify that carriers must collect all required APIS data, at the gate or other suitable place, and await appropriate vetting results (''cleared'' or ''selectee'') before boarding these passengers (validation also occurs as carriers will either swipe the travel document or personally observe it at the gate). This is the only instance under the APIS process where a carrier is allowed to issue a boarding pass to a passenger, or have a boarding pass issued to a passenger by another carrier it has made arrangements with concerning connecting passengers, for an APIS-covered flight without first having received an appropriate vetting result for that passenger.

Finally, where the interactive batch transmission option is employed and connecting passengers with boarding passes arrive at the gate (or other suitable location) within the 30-minute window, the carrier is not required to wait 30 minutes from the time the data is transmitted to secure the aircraft and depart, provided that appropriate vetting results are received, and validation occurs, before any connecting passenger is boarded.

(c) Effect of a ''Not-Cleared'' Instruction

In the NPRM, CBP proposed that a carrier using either of the batch transmission options must not board a passenger subject to a ''not-cleared'' vetting instruction. This final rule changes the requirement to prohibit these carriers from issuing a boarding pass to such passengers. This change merely brings the APIS regulation into conformance with existing TSA requirements to which carriers are already subject. CBP's proposed prohibition on issuing a boarding pass to such passengers under the AQQ option also is adopted in the final rule.

Also, the NPRM's regulatory text provides that a carrier is bound by a ''not-cleared'' instruction, even when the further vetting process has not been concluded before departure. While this specific language does not appear in the regulatory texts of this final rule, the rule makes clear that a carrier may not issue a boarding pass to, or board, a ''not-cleared'' passenger unless such passenger is cleared to board during further vetting and the carrier has received that further vetting result (either a ''cleared'' or ''selectee'' instruction).

(d) ''Acknowledgement'' Requirement

CBP initially proposed that a carrier using the AQQ option must contact CBP to acknowledge receipt of a ''not-cleared'' instruction. This step in the process has been determined to present an unnecessary burden on the electronic transmission/communication process. Accordingly, CBP has removed this requirement from the final rule.

(e) ''Resolution Contact'' Requirement

In the NPRM, CBP proposed that a carrier using the AQQ transmission option, at its discretion, could seek resolution of a ''not-cleared'' instruction by providing additional information about a ''not-cleared'' passenger to assist in the further vetting of that passenger. This final rule makes this resolution contact mandatory for all carriers regardless of the transmission option chosen and specifies that the carrier must contact TSA for this purpose.

(f) Close-Out Message

CBP proposed that carriers, regardless of the transmission option chosen, would send to CBP, no later than 30 minutes after departure, a unique identifier for each passenger that checked-in for, but did not board, the flight for any reason (referred to as a close-out message). This final rule changes the close-out message requirement by applying it only to the interactive transmission options (batch and AQQ), specifying that transmission must be no later than 30 minutes after the securing of the aircraft, and clarifying that the carrier may identify passengers who did not board the aircraft in the close-out message by

specific passenger data (such as, and typically, by use of a passenger's name).

B. Vessel Requirements

As explained in the NPRM, and mentioned previously in this final rule, CBP determined that the appropriate level of security for vessels departing from the United States is to prevent such a departure with a high-risk passenger or crew member onboard (a known or suspected terrorist identified by vetting against the terrorist watch list). This determination was based on CBP's recognition that the commercial vessel travel industry operates in a vastly different manner than does the air travel industry. Commercial vessel carriers typically allow boarding several hours (usually three to six hours) prior to departure. (CBP also notes that the definition of ''departure'' for commercial vessels is found in 19 CFR 4.0(g) and, for APIS purposes, is regarded to mean the moment when the vessel, with all passengers and/or cargo onboard, leaves the dock directly en route to its foreign destination.) Thus, unlike the commercial air travel environment, a manifest transmission requirement designed to prevent the possibility of a high-risk vessel-boarding likely would require extraordinary adjustments to the carriers' operations and have a significant impact on passengers. This would frustrate CBP's intent, and the purpose of various requirements governing Federal rulemaking, to achieve the agency's goal (enhanced security) without imposing an unreasonable burden on affected parties.

Thus, CBP proposed that vessel carriers transmit passenger and crew manifests for vessels departing from the United States no later than 60 minutes prior to departure. This timing requirement will remain the same in this final rule. This change will achieve the level of security sought by CBP for these vessels and thereby meet the purposes of the governing statutes, including the pre-departure vetting mandate of IRTPA. CBP noted in the NPRM that the electronic system for transmission of required vessel manifest data (arrival and departure) is now the (Internet-based) eNOA/D system of the U.S. Coast Guard (USCG). This is not an interactive system; so, unlike air carriers operating under the APIS 30 interactive or AQQ options, vessel carriers would not have to obtain system certification.

After transmission of the manifest data, the initial automated vetting process, which will involve vetting against the same terrorist watch list used for aircraft passenger vetting, CBP will issue a ''not-cleared'' instruction for matches, possible matches, and incomplete/inadequate passenger records or crew data. Passengers or crew who are not matched by CBP will generate ''cleared'' messages. Carriers will be able to prevent the boarding of ''not-cleared'' persons if such persons have not already boarded (due to the very early boarding allowed). CBP notes that a ''not-cleared'' message returned to the carrier by CBP for an inadequate record would instruct the carrier to retransmit complete/corrected data.

CBP proposed that, during further vetting (which is the same process as described previously for air carriers), passengers and crew for whom ''not-cleared'' instructions were generated during the initial automated vetting procedure would be either confirmed as high-risks or resolved and cleared. The proposed rule pointed out that the current requirement for batch manifest transmission—no later than 15 minutes prior to a vessel's departure from a U.S. port—does not provide enough time to fully vet passengers or crew members or allow, where necessary, for the removal of a confirmed high-risk passenger or crew member from a vessel prior to departure. The APIS 60 procedure implemented under this final rule will provide CBP the time it needs, in the great majority of cases, to fully vet ''not-cleared'' passengers and crew members and to remove those confirmed as high-risk from the vessel prior to departure, thereby achieving the appropriate level of security sought by CBP. CBP does not guarantee these results in every instance and much depends on the carriers' procedures for locating and de-boarding identified high-risk travelers.

For vessels departing from foreign ports destined to arrive at a U.S. port, CBP is retaining the current requirement to transmit passenger and crew arrival manifest data at least 24 hours and up to 96 hours prior to a vessel's entry at the U.S. port of arrival. This requirement is consistent with the USCG's ''Notice of Arrival'' (NOA) requirements. (Under 33 CFR 160.212, arriving vessel carriers transmit manifest data to the USCG to meet its NOA requirement. The data is then forwarded to CBP, permitting additional compliance with CBP's APIS requirement with the one carrier transmission.) Moreover, the threat posed by a high-risk passenger or crew member once onboard a vessel is different to some extent from that posed by a high-risk passenger onboard an aircraft. A hijacked vessel's movements over the water and its range of available targets could be more readily contained than those of an aircraft, thus reducing the opportunity for a terrorist to use the vessel as a weapon against a U.S. port or another vessel.

III. Discussion of Comments

The NPRM requested comments, to be submitted on or before August 14, 2006, regarding the proposed amendments and its accompanying economic evaluation. The comment period was extended to October 12, 2006, by notice published in the **Federal Register** (71 FR 43681) on August 2, 2006. A total of 54 comments were received. CBP responds to the comments below, first to those pertaining to the proposed amendments, and second, to those pertaining to the economic evaluation.

A. Comments Pertaining to the Proposed Regulation

1. General Comments

Comment: Five commenters requested an extension of the public comment period for the NPRM.

Response: CBP extended the comment period an additional 60 days (to October 12, 2006) in a notice published in the **Federal Register** (71 FR 43681) on August 2, 2006.

Comment: One commenter expressed general disagreement with the proposed rule without noting specific issues. Several commenters generally supported the NPRM. Two commenters expressed support for the interactive APIS process. Another commenter expressed support for CBP's assuming responsibility for watch list screening and removing this responsibility from the carriers.

Response: CBP appreciates the supportive comments and is unable to respond to non-specific disagreements.

Comment: One commenter expressed appreciation for CBP continuing to provide the eAPIS transmission method for those carriers that cannot implement the interactive APIS transmission options.

Response: CBP appreciates this comment and notes that it is working to establish a Web interface that will greatly improve the speed and security of APIS transmissions via eAPIS.

Comment: Three commenters urged that dialogue continue between CBP and the airline industry prior to publication of the final rule. One commenter stated that CBP should launch an aggressive outreach campaign to inform the public of the new requirements. This commenter also asked that CBP assemble an advisory group comprised of air carrier and CBP representatives to examine emerging operational issues regarding implementation of a final rule.

Response: CBP has worked extensively with the carriers and their

representatives throughout this rulemaking process and is committed to continue that work to successfully and efficiently implement this final rule. This communication between CBP and the industry serves the essential purpose of an advisory group. CBP is committed to a robust public outreach effort so that impacts of the final rule are minimized and understood by the traveling public.

Comment: Numerous commenters stated that the proposed implementation date for the final rule should be extended beyond 180 days. Alternatives suggested included 300 days, one year, 18 months, and two years following publication of the final rule. Eight commenters requested that CBP refrain from implementing the final rule until the APIS program has been coordinated with TSA's Secure Flight program. Two commenters suggested a phased approach to implementation of the rule for the airline industry. One commenter asked that carriers be exempt from employing interim transmission methods until certified by CBP to use AQQ.

Response: CBP does not agree with these comments to prolong implementation of the final rule. As was recently evidenced by the increased security alert for flights departing from the United Kingdom, there is, and continues to be, a real threat to the aviation industry. CBP has been directly engaged with the air carrier industry in the continued development of the pre-departure APIS process, and many air carriers are taking steps to design their internal and external (third-party) interface processes. CBP continues to work with the air carrier industry to implement the pre-departure vetting of passengers. Carriers that cannot transition their systems to implement either of the proposed interactive options within the 180-day time frame will have to employ the non-interactive batch transmission option after the delay period's expiration. During the interim period, after publication of the final rule and before expiration of the delay period, carriers will be allowed to transmit manifest data by an available non-interactive method. CBP will eventually discontinue email transmissions by carriers, but eAPIS will continue to be available to carriers for manifest transmissions.

Regarding coordination with the Secure Flight program, the APIS pre-departure requirements under this final rule will likely be effective prior to implementation of the Secure Flight program, which remains in development at TSA. CBP, and TSA, however, have worked to make programming changes required for APIS compliance compatible, to the extent possible, with those that are anticipated to be required under Secure Flight. For example, under the process to be implemented under this final rule, CBP is encouraging, but not requiring under the rule, carriers to make transmissions of data as early as 72 hours prior to scheduled departure for early security vetting and early issuance of boarding passes if warranted, a feature expected to be part of the TSA Secure Flight program in some form. DHS encourages carriers to adopt early transmissions as a best business practice. The CBP system will be able to receive manifest data transmitted early, and CBP will perform early vetting of this data if transmitted. CBP also is encouraging, but not requiring, that carriers include in their transmissions redress numbers issued by TSA (or any other unique passenger number approved by DHS for the purpose) to facilitate identification of passengers on a TSA cleared list (of passengers who have requested redress respecting a previous false positive vetting result) that will be checked in the vetting process.

Comment: One commenter stated that the NPRM, if adopted, would infringe on First Amendment rights because the rule restricts free movement of people into the United States.

Response: CBP does not agree that the changes made in this final rule will restrict the free movement of people arriving in and departing from the United States. Requiring carriers to submit passenger information in accordance with current APIS regulations and the amendments of this final rule, which affect the timing of data transmission and process, does not deny or impede the ability of people to travel to and from the United States. These regulations, as amended by this final rule, are within CBP's authority pursuant to the Aviation Transportation Security Act of 2001, the Enhanced Border Security and Visa Entry Reform Act of 2002, and the Intelligence Reform and Terrorism Prevention Act of 2004. As stated by CBP in the 2005 APIS Final Rule (70 FR 17828), the U.S. Supreme Court has recognized that the right to travel abroad is not an absolute right and that ''no government interest is more compelling than the security of the Nation.'' *Haig* v. *Agee,* 453 U.S. 280, 307 (1981). The Supreme Court also has stated that the government may place reasonable restrictions on the right to travel in order to protect this compelling interest. See *id.* (reminding that the ''right'' of international travel can be regulated within the bounds of due process); see also *Eunique* v. *Powell,* 302 F. 3d 971, 974 (9th Cir. 2002) (Fernandez, J.); *Hutchins* v. *District of Columbia,* 188 F. 3d 531, 537 (DC Cir. 1999).

In addition, a ''Civil Liberties Costs and Benefits'' analysis was included in the 2005 APIS Final Rule (70 FR 17847), and it concluded that the non-quantified benefits (enhanced security, increased travel) exceed the non-quantified costs (the collection of personal data that would, to some extent, deter persons from traveling) flowing from the rule. This final rule does not affect the collection of data provisions. This final rule affects only the time requirements for transmission of that data and the process by which it is collected and transmitted to the CBP system and the system communicates with the carriers to report security vetting results. CBP, without agreeing that the rule's changes impose an additional cost on travelers, submits that any increase in the deterrent impact on prospective legitimate travelers that these changes might cause would be negligible, since carriers already require international passengers to arrive at the airport early and passengers will still be able to benefit from early check-in processes. This negligible increase in non-quantifiable costs, if there is one, should be weighed against the likely increase in the non-quantifiable benefits that will derive from the timing and process changes made in this final rule: an enhanced aviation security process, with a greater ability to prevent a terrorist incident, and the resultant possible increase in passengers who appreciate a safer air travel environment. In the 2005 APIS Final Rule, CBP stated that the regulation then published was designed to enhance the ability to travel, not to restrict it. CBP believes that the security enhancement achieved in this final rule published today will likewise further enhance, rather than impair, the public's ability and willingness to travel.

Comment: One commenter asked how and when the public would be notified of the finalization of the rule.

Response: The publication of this final rule in the **Federal Register** is notification that the rule has been adopted as final and will become effective on February 19, 2008.

2. Comments Beyond the Scope of the Rule

Comment: Eight commenters submitted several comments on the AQQ Interactive User Guide.

Response: Comments on the user guide (now known as the ''Consolidated User Guide'') are beyond the scope of this rule. The APIS regulation, unlike

the guide, is not designed to provide detailed and comprehensive technical specifications, guidance, or instructions for operation of the electronic transmission system. An updated guide is currently in preparation.

Comment: Four commenters stated that the Form I–94 Arrival/Departure Record should be eliminated. One commenter stated that the Form I–418 Passenger List-Crew List should be eliminated, and another recommended that the general customs declaration (CF 6059B) be eliminated.

Response: Comments on the Form I–94, Form I–418, and the general customs declaration are beyond the scope of this rule.

Comment: One commenter stated that the planned PASS card should be accepted in the air travel environment.

Response: Comments on the PASS card, the State Department's proposed passport card for travel to the United States from within the Western Hemisphere, are beyond the scope of this rule.

Comment: One commenter stated that the transit without visa (TWOV) program should be reinstated.

Response: Comments on the currently suspended TWOV program, which allowed passengers from certain designated countries to transit through the United States without a visa, are beyond the scope of this rule.

Comment: One commenter stated that International Air Transport Association (IATA) should develop a standard for transmission and sharing of AQQ messages between air carriers.

Response: The decision to share APIS data between air carriers is outside the purview of CBP's authority and beyond the scope of this rule. While data-sharing agreements between carriers are business decisions unique to each carrier or carrier alliance, CBP acknowledges that such agreements would enhance the APIS data transmission/security clearance process, particularly with respect to connecting passengers.

Comment: Two commenters stated that air cargo manifests could not be submitted 60 minutes prior to departure without seriously disrupting cargo operations on small carriers.

Response: CBP notes that this rule does not change any requirements for submitting cargo manifests for aircraft or vessels. The rule is narrowly applicable to passenger manifests for flights arriving in and departing from the United States and passenger and crew manifests for vessels departing from the United States. Comments on other sections of the CBP regulations or any other provisions of the current APIS regulations are beyond the scope of this rule.

Comment: Six commenters requested that the final rule require air carriers to transmit to CBP only the APIS data elements that are obtainable from the machine-readable zone of the travel document presented by the passenger.

Response: The NPRM did not propose changes to the required data elements under the APIS regulations; rather, the NPRM is limited to proposed changes in the timing and manner of submission of this information to CBP. Therefore, comments regarding required APIS data elements are beyond the scope of this rule, although CBP, in this document, encourages, but does not require, carriers to include in their transmission of manifests or manifest data passenger redress numbers issued by TSA (or another unique identifier approved by DHS for the purpose) to facilitate resolution of possible matches.

Comment: One commenter asked if the proposed change regarding vessel carrier transmission of passenger and crew manifests no later than 60 minutes prior to departure would be applicable for vessels departing from foreign ports bound for the United States. This same commenter asked if APIS data could be transmitted 10 minutes prior to departure. Another commenter asked if a final rule would affect pre-clearance processing for voyages beginning in Canada and bound for the United States.

Response: As set forth in the NPRM, the proposed change to a 60-minute prior to departure requirement is applicable only for vessels departing from the United States, not for vessels departing from a foreign port bound for the United States. Comments on the vessel arrival scenario are beyond the scope of this rule. CBP nonetheless notes that for arriving vessels, CBP is retaining the requirement to transmit passenger and crew manifest data at least 24 hours and up to 96 hours prior to a vessel entering the U.S. port of arrival.

Comment: Two commenters stated that the rulings and regulations governing the U.S. Outer Continental Shelf (OCS) and Exclusive Economic Zone (EEZ) should be completely reworked in conjunction with the USCG.

Response: Changes to the regulations and agency rulings pertaining to OCS activities and the definition of the EEZ are beyond the scope of this rule.

3. Comments From (or on Behalf of) Air Carriers

Comment: One commenter requested that CBP clarify in the regulations that air carriers alone supply APIS data and be liable for its accuracy.

Response: Under the current APIS regulations (§§ 122.49a(b)(1) and 122.75a(b)(1)), commercial air carriers are responsible for transmitting APIS manifest data. In addition, the current regulations require the carriers to compare the travel document presented by a passenger with the information it is sending to CBP for the purpose of ensuring, to the extent possible in the circumstances, that the information is correct, the document appears to be valid for travel, and the person presenting the document is the one to whom it was issued (§§ 122.49a(d) and 122.75a(d)). The final rule does not change these provisions.

Comment: One commenter asked that flights of less than one hour be exempt from the rule, that flights between the United States and territories in the Caribbean be exempt, and that carriers should be able to submit a request for exemptions on certain routes. Another commenter asked that passengers on flights chartered by the Department of Defense (DOD) be exempt from the rule.

Response: CBP does not agree with these comments, and the final rule's amendments will not include exemptions for the circumstances, routes, or passengers described. However, the transmission of APIS data is not required for flights between the United States and U.S. territories and possessions. It also is noted that the APIS manifest transmission requirement does not apply to active duty U.S. military personnel traveling as passengers on DOD commercial chartered aircraft. See §§ 122.49a(c) and 122.75a(c).

Comment: Three commenters requested that carriers operating flights from pre-clearance locations be exempt from APIS transmission requirements for passengers that have been processed at those locations prior to entering the United States. One commenter contended that requiring APIS transmissions for these flights would be redundant.

Response: CBP disagrees with these comments. The amendments of the final rule apply to flights from pre-clearance locations. Currently, carriers departing from pre-clearance locations are required to ensure that passengers are vetted for APIS purposes. Under this final rule, carriers are required to collect and transmit all required APIS data elements in accordance with applicable provisions (for either the batch or the AQQ process), including the timing of manifest transmission and others explained further in this section.

Comment: One commenter requested that the email system currently employed to transmit APIS batch manifests be maintained until the new interactive capabilities proposed are in place.

Response: CBP has established a web application, eAPIS, which will allow submitters to upload batch manifests in lieu of an email communication. Furthermore, CBP is developing a web service through eAPIS that will afford a more automated process for manifest submissions. CBP is expecting to discontinue email transmission for APIS manifests in 2007, at which time email users can adopt the eAPIS transmission process.

Comment: Four commenters inquired about the responsibility, under a final rule, for vetting passengers against the terrorist watch list. One commenter asked for clarification on the management of the list. Two commenters asked if carriers would be responsible for checking air carrier employees against the list. Three commenters requested confirmation that, under the proposed AQQ option, the government will perform terrorist watch list vetting for the domestic portion of an international itinerary. One commenter asked for AQQ to be available to vet airline crew.

Response: Under the manifest transmission/security vetting process as implemented under this final rule, the government will perform No-Fly and Selectee watch list vetting of passengers traveling on international flights to and from the United States and of passengers and crew traveling on international voyages departing from the United States (use of the No-Fly list not being limited to aircraft vetting). The carriers will be relieved of that responsibility upon the effective date of this rule, but only with respect to those flights and voyages subject to the APIS provisions of the CBP regulations. As the government is assuming the vetting responsibility for APIS purposes, carrier management of these watch lists (No-Fly and Selectee) for APIS purposes is beyond the scope of the rule. However, carriers remain subject to any applicable TSA requirements to check pertinent watch lists, such as a watch list for vetting carrier employees; management of such watch lists also is beyond the scope of this rule.

As noted previously, CBP is designing its systems to align, to the extent possible, international APIS security vetting requirements and process with TSA's anticipated domestic Secure Flight program security vetting requirements and process.

Regarding the vetting of domestic flights, the APIS regulations cover international flights (i.e., flights to and from the United States and, relative to aircraft crew and non-crew members only, flights continuing within (after arrival from a foreign port) and over-flying the United States). Therefore, the APIS regulations do not cover the domestic portion of an international flight from one U.S. port to another before departure to a foreign port, and this final rule does not concern the vetting of flights continuing within the United States, a domestic leg, as APIS data is required only for crew and non-crew, not passengers, on those flights.

Finally, the amendments of the final rule do not affect the APIS regulations concerning air carrier manifest transmissions for crew and non-crew members; the AQQ process is for passenger manifest data transmission. Under applicable APIS regulations, the carrier must transmit crew manifests no later than 60 minutes prior to departure (wheels-up) (§§ 122.49b and 122.75b).

Comment: Numerous comments concerned the definition of ''departure'' for aircraft. Fourteen commenters stated that the definition of departure should remain ''wheels-up,'' as set forth in the current regulation. One commenter agreed with the definition of departure as ''push-back from the gate.'' A few commenters pointed out that not all carrier operations involve aircraft pushing back from a gate.

Response: CBP has reconsidered the matter and is retaining the current definition of departure (wheels-up) in the regulation. However, since the commenters' objection to the proposed definition change relates to the timing of manifest transmissions, CBP notes additionally that such transmissions under the final rule will be tied to the moment the aircraft's doors are closed and secured for flight (referred to as the ''securing of the aircraft''), a time closely proximate to push-back from the gate but applicable to all aircraft, including smaller carriers whose operations do not involve a departure gate. Consequently, the final rule will not revise the definition of ''departure'' as proposed but will add the definition of ''securing the aircraft.'' See § 122.49a(a).

Thus, as explained in further detail in comment responses below dealing with the proposed rule's manifest transmission time requirements, the final rule will require batch passenger arrival and departure manifest transmissions no later than 30 minutes prior to the securing of the aircraft. For the AQQ arrival and departure scenarios, passenger manifest data transmissions are allowed up to the securing of the aircraft. The retained definition of ''departure'' as wheels-up continues to apply to transmissions of crew and non-crew manifests.

Comment: Numerous comments concerned the NPRM's 60-minute APIS batch transmission option. Many commenters suggested that the proposed requirement to transmit batch information 60 minutes prior to departure (push-back) be reduced to something less than 60 minutes, stating primarily that manifests may not be complete at 60 minutes out and that this option places an unreasonable burden on carrier operations. One commenter stated that this option would be especially burdensome where passengers already have undergone a security background check. Recommendations for an alternative time requirement included 30 minutes and 15 minutes prior to departure, maintaining the current regulation's requirements (15 minutes after wheels-up departure for arriving flights and no later than 15 minutes prior to wheels-up departure for departing flights), and requiring transmission when a flight is downloaded to the carrier's departure control system.

Response: Based on lessons learned during the aftermath of the exposed bomb plot in London, and the consequent technical and operational adjustments made in the manifest transmission and security vetting processes during that time which allowed CBP to complete the process more quickly, CBP has determined that the proposed 60-minute time requirement can be reduced without sacrificing security effectiveness (a CBP-imposed pre-condition to any reduction). Thus, for batch manifest transmissions, for flights en route to (arriving flights) and departing from (departing flights) the United States, CBP is modifying the proposal in the final rule to provide that carriers must transmit batch passenger manifests no later than 30 minutes prior to the securing of the aircraft. See §§ 122.49a(b)(2) and 122.75a(b)(2) and the immediately previous comment and response regarding the definition of ''departure'' for aircraft.

This manifest transmission timing change allows carriers to make transmissions later in the process (aircraft loading/boarding/departure process) than was proposed in the NPRM, and therefore calls upon carriers to take into consideration that the carrier may not receive the results of vetting information transmitted to CBP close to the 30-minute deadline prior to the aircraft's scheduled departure. This could cause aircraft departure delays or

departures that leave behind one or more customers (passengers generating ''not-cleared'' initial vetting responses) who are not permitted to board the aircraft because of a not-cleared response or inability to complete screening. While CBP believes that 30 minutes is sufficient time for completion of the full vetting process most of the time, it cannot guarantee this result in every instance. Carriers also should consider that under current TSA requirements and this final rule, carriers must contact TSA to seek resolution of ''not-cleared'' vetting results. Transmitting manifests as late as 30 minutes prior to securing the aircraft will leave little time for this required task. CBP, therefore, encourages air carriers to submit manifest information as early as possible to ensure timely completion of vetting prior to the aircraft's scheduled departure.

CBP expects that carriers will exercise sound business judgment regarding when to transmit manifests. Sound judgment that lessens risk will have a positive impact on the process, making it more effective for all concerned. In this regard, the final rule also makes clear that multiple batch transmissions are permitted and that a carrier may employ both the APIS batch process for early transmissions and the AQQ process for transmissions within the 30-minute window.

In addition, carriers have requested that CBP allow manifest data transmissions as early as 72 hours prior to departure. CBP agrees that such early transmissions, which DHS encourages carriers to adopt as a best business practice, would generate early vetting results, subject to later validation by the carrier (swiping of passport or other travel document or examination of document by carrier personnel), and allow early issuance of boarding passes, resulting in fewer passengers to be vetted within the 30-minute window and a reduced risk of passengers missing their flights while further vetting is conducted. With respect to early transmissions, as noted previously, TSA is developing the Secure Flight program to be administered and enforced by TSA and is preparing a proposed rule for implementation of the program that may mandate carrier transmission of certain data pertaining to passengers as early as 72 hours prior to scheduled departure for security vetting purposes. With the best interest of the traveling public and the industry in mind, DHS encourages carriers to begin development of a process for making early transmissions to enhance later alignment between the APIS and Secure Flight programs; once Secure Flight is operational, TSA will eventually assume the complete terrorist vetting function for both international and domestic flights, while, after this transition, CBP will continue to require complete APIS transmissions by applicable deadlines for purposes of its traditional customs, immigration, and border enforcement/security functions. DHS is committed to working with the carriers to ensure that any processes developed include carrier input and take into consideration the important interests of the public and the carrier industry. CBP notes that it has dedicated a team of officers (operating over the past two years) to work with various carriers, carrier industry partners, and TSA in the development of coordinated processes that will benefit all parties.

CBP acknowledges that some carriers, typically smaller carriers that employ the batch transmission process (either interactive or non-interactive), may not be able to make early transmissions. CBP is confident that the transmission/security vetting process will work adequately for these carriers most of the time and that the intended security goals will be achieved.

Further to the matter of security effectiveness, CBP has determined that the batch transmission provisions of the APIS regulation should mirror current TSA requirements that prohibit carriers from issuing boarding passes to passengers who have not been either ''cleared'' for boarding or designated as ''selectees;'' thus, the batch transmission provisions of the final rule are modified accordingly to require that carriers must not issue boarding passes to passengers generating a ''not-cleared'' vetting response (the converse being that carriers may issue boarding passes only to ''cleared'' and ''selectee'' passengers). See §§ 122.49a(b)(1)(ii)(A) and (B) and 122.75a(b)(1)(ii)(A) and (B). The NPRM proposed that carriers using either of the batch manifest transmission options preclude a passenger from boarding the aircraft, without prohibiting issuance of the boarding pass, if not cleared by the CBP system. This change merely brings the APIS regulation into conformance with existing TSA requirements to which carriers are already subject.

Finally, regarding passengers who have already undergone a security background check, presumably conducted by an air carrier or by another private entity on the carrier's behalf, CBP cannot accept a carrier's privately conducted background investigation in lieu of the vetting of APIS data against government established and maintained watch lists.

Comment: Fourteen commenters stated that the proposed requirement that carriers must transmit APIS passenger data via the AQQ process by 15 minutes prior to aircraft departure (push-back) is unnecessary as long as the passengers receive security clearance prior to boarding the aircraft.

Response: Under the proposed rule, carriers using AQQ would be required to transmit individual passenger data up to, but no later than, 15 minutes prior to departure (push-back) and to not issue a boarding pass to any passenger not cleared by the CBP system. The final rule retains the latter requirement prohibiting issuance of the boarding pass; this prohibition mirrors current TSA requirements that prohibit carriers from issuing boarding passes to passengers until the passenger names have been compared against the applicable terrorist watch lists and cleared for boarding. However, CBP agrees with the commenters that the 15-minute transmission deadline is unnecessary because air carriers are prohibited from issuing a boarding pass until the passenger is cleared and the AQQ process is capable of producing an initial vetting response within seconds of the transmission of data to the CBP system. Therefore, CBP is eliminating the proposed 15-minute time frame from the final rule's AQQ provision; the final rule permits carriers using AQQ to transmit APIS data up to the securing of the aircraft, i.e., the moment at which the aircraft's doors are closed and secured for flight. See §§ 122.49a(b)(2) and 122.75a(b)(2) below. DHS has determined that this procedure still accomplishes its security goal to keep high-risk passengers from boarding an aircraft and to prevent the baggage of such passengers from being loaded onto the aircraft.

CBP again notes that this transmission time change for the AQQ process calls upon the carriers to take into consideration the risk associated with late transmissions (those made just before or otherwise too close to the deadline for completion of further vetting of ''not-cleared'' passengers) and to exercise sound business judgment to avoid having to face a choice between delayed aircraft departures or departures that leave behind one or more customers (passengers generating ''not-cleared'' vetting responses) who were not permitted to board the aircraft.

Transmissions of data as early as 72 hours prior to scheduled departure, which carriers have requested and CBP encourages as a best business practice, would generate early vetting results, subject to later validation by the carrier (swiping of passport or other travel

document or examination of document by carrier personnel), fewer passengers to be vetted later in the process, and a reduced risk of passengers missing their flights while further vetting is conducted. CBP encourages carriers to begin development of a process for making early transmissions to enhance later alignment between the APIS and Secure Flight programs. Once Secure Flight becomes operational, TSA will eventually assume the complete pre-departure terrorist vetting function for both international and domestic flights, while, after this transition, CBP will continue to require complete APIS transmissions by applicable deadlines for purposes of its traditional customs, immigration, and border enforcement/security functions.

Comment: Eight commenters asked about the steps or processes that would follow a carrier's receipt of a ''not-cleared'' message from CBP. One commenter stated that passengers receiving an initial ''not-cleared'' message must be processed promptly. Another stated that ''false positives'' must be minimized. A third commenter stated that most passengers generating ''not-cleared'' messages are innocent.

Response: Under the final rule's (interactive and non-interactive) batch manifest transmission and AQQ transmission options, a carrier may not issue a boarding pass to a passenger whose data generates a ''not-cleared'' response from the CBP system. Put another way, a carrier must not issue a boarding pass to a passenger unless it receives a ''cleared'' or ''selectee'' vetting response from the CBP system. In the latter instance, a ''selectee'' passenger may board the aircraft after successfully undergoing secondary screening (such as searching a passenger's baggage or person manually or otherwise), in accordance with applicable TSA requirements.

Additionally, the carrier may not load onto the aircraft, or must remove if already loaded, the baggage of a ''not-cleared'' passenger. A carrier may not, under any circumstances, transport baggage belonging to a passenger who has not been cleared. A carrier must contact TSA to seek resolution of ''not-cleared'' responses by providing additional information about the ''not-cleared'' passenger, if necessary (meaning if TSA requires additional information that the carrier can provide to complete further vetting). A requirement to acknowledge receipt of a ''not-cleared'' response by sending a return message to the CBP system was proposed for the AQQ option. CBP has decided to delete that step from the process in this final rule. The ''resolution contact'' requirement, which was discretionary in the NPRM for the AQQ option but is now mandatory for all transmission options, has been modified to mirror existing TSA requirements. While these changes regarding the resolution contact requirement (making it mandatory and also applicable to interactive and non-interactive batch users) represent a change from what was proposed, the final rule merely conforms the APIS regulation with the existing TSA requirements to which carriers are already subject. See §§ 122.49a(b)(1)(ii)(A), (B), and (C) and 122.75a(b)(1)(ii)(A), (B), and (C).

In addition, TSA will contact the carrier to clear a ''not-cleared'' passenger for boarding, or to downgrade such a passenger to ''selectee'' status, should the clearance or downgrade be warranted by the results of the further vetting analysis. However, should there be insufficient time to complete further vetting, the carrier is bound by the ''not-cleared'' instruction. Carriers are expected to exercise sound business judgment in implementing the steps or processes needed to ensure compliance with the amendments of this final rule and applicable TSA requirements regarding ''not-cleared'' passengers and their baggage. TSA will not contact the carrier to confirm a ''not-cleared'' vetting result (but will be able to inform the carrier about the status of a ''not-cleared'' passenger during the resolution communication).

CBP assures the commenters that steps are being taken to minimize false positives, but notes that these can never be eliminated entirely. The further vetting process and the requirement that carriers contact TSA to resolve a ''not-cleared'' vetting response are two measures designed to clear false positives. CBP also will have real-time access to the list maintained by TSA of people who have obtained redress through TSA's redress process; an automated check against the list could clear a passenger initially identified as ''not-cleared'' and preempt the CBP system from issuing the ''not-cleared'' instruction. The TSA redress list will be used to check every passenger who generates a ''not-cleared'' response during initial vetting, whether or not the ''not-cleared'' passenger has a redress number. Redress numbers are issued by TSA to passengers who request redress for a false positive vetting result. CBP strongly encourages (but is not requiring under this final rule) carriers to transmit redress numbers (or any other unique identifier approved by DHS for that purpose) within their APIS transmissions if such numbers are available. DHS has recently published a notice announcing a department-wide redress policy that will be applicable to pre-departure passenger vetting as well as other watch list vetting activities (*http://www.dhs.gov/trip*). DHS's ''Traveler Redress Inquiry Program'' (TRIP) is a voluntary program that provides a one-stop mechanism to request redress for passengers who believe that they were erroneously denied or delayed boarding due to DHS security screening, denied or delayed entry into or departure from the United States at a port of entry, or identified for secondary screening. TRIP will provide traveler redress intake and processing support while working with relevant DHS components to review and respond to requests for redress. TRIP applies also to screening at seaports.

Finally, regarding false positives, CBP recommends that carriers minimize instances of manifest data transmissions too close to the transmission deadline (30 minutes prior to securing the aircraft or, for AQQ users, the securing of the aircraft) to allow for completion of the further vetting process. As stated previously, CBP believes that 30 minutes is sufficient time to complete the vetting process in most cases for batch transmissions but is unable to guarantee that result in every instance. The CBP system may not be able to complete further vetting when AQQ users transmit data too close in time to the securing of the aircraft.

Comment: Four commenters asked if a carrier would be required to wait 60 minutes before departing where there was a passenger change subsequent to the carrier's submission of an eAPIS report.

Response: Under the final rule, if a carrier using eAPIS (Internet process) or any batch manifest transmission process requiring transmission no later than 30 minutes prior to securing the aircraft has a passenger change subsequent to making a batch transmission, the carrier will be required to transmit the change no later than 30 minutes prior to securing the aircraft (updating a passenger manifest prior to the deadline is permitted). Should a ''cleared'' response be received for that passenger within that 30-minute window, the carrier could then issue the boarding pass and board the cleared passenger; the aircraft could depart without waiting for the 30-minute window to elapse.

Comment: Six commenters requested that carriers be able to select the method of APIS transmission (batch or AQQ) on a per-flight basis to allow for situations where AQQ is not practical.

Response: A carrier may utilize either or both of the options on a per-flight or per-manifest basis according to the carrier's operational needs. CBP recognizes that some carriers may want to employ the batch process for early transmissions and then change to individual passenger, AQQ transmission within the 30-minute window. Any combination is acceptable, provided that the time and other requirements for each option are met.

Comment: Ten commenters expressed concerns regarding the proposed rule's requirement that carriers making transmissions under the AQQ option are precluded from issuing boarding passes to passengers until they are cleared by the CBP system.

Response: As mentioned (and cited) previously, current TSA requirements preclude carriers from issuing a boarding pass for any travelers who are not cleared against the No-Fly terrorist watch list. Thus, for originating passengers boarding flights en route to or departing from the United States, the AQQ vetting process under the final rule (as well as the final rule's batch transmission options) mirrors the current process with which the carriers already comply. DHS has determined that this is the most effective way, under either the batch or AQQ transmission processes, to ensure that passengers who are not cleared by CBP are prevented from posing a threat to the aircraft.

Comment: One commenter stated that, under the AQQ process, the initial vetting response must be sent immediately if it is to be awaited by the carrier as each passenger checks in.

Response: Regarding the initial (automated) vetting response under AQQ, CBP agrees with the commenters and assures carriers that the AQQ process will provide a ''real-time'' vetting result, which normally will be sent within seconds of receipt of the data.

Comment: One commenter requested that CBP eliminate the requirement to return a message to CBP confirming the receipt of a ''not-cleared'' message.

Response: CBP has removed the ''acknowledgement'' requirement from the regulatory texts in this final rule. CBP's technical experts recommended removal due to the burden on the electronic transmission/communication process. See amended § 122.49a(b)(ii)(B).

Comment: Nine commenters stated that through-checked passengers in transit (connecting passengers) will be negatively affected by the proposed rule's AQQ requirement that APIS information be sent at check-in. Another commenter stated that CBP should eliminate provisional boarding passes as discussed in the NPRM regarding connecting passengers.

Response: CBP understands that, under some circumstances, connecting passengers may be disadvantaged to some extent under the rule as proposed and adopted; however, CBP has designed the process to minimize occurrences of delayed or missed flights. The comments pertain to a circumstance where connecting passengers arrive at the airport (from which the APIS-regulated connecting flight departs directly to or from the United States), already in possession of boarding passes for that flight, despite the fact that the APIS-responsible carrier has not collected required APIS data for those passengers and they have not yet been cleared by the CBP system. This circumstance contrasts with the ordinary AQQ transmission/security vetting procedure (applicable to originating passengers), as proposed in the NPRM, where the carrier transmits passenger data to the CBP system as passengers check in, and the CBP system responds in seconds with a vetting result. Under the proposed AQQ provision, vetting by the CBP system and the system's return of a ''cleared'' response to the carrier precede issuance of a boarding pass.

In the NPRM, CBP explained that it would consider boarding passes issued to connecting passengers in the described circumstance as provisional. Carriers would be required to obtain required data from these passengers, in a manner compatible with their procedures/operations, and transmit such data to the CBP system as required under the regulation. Thus, under the final rule, a carrier must provide APIS data upon the connecting passengers' arrival at the gate, or some other suitable place designated by the carrier, so long as either a ''cleared'' or ''selectee'' message is received prior to boarding the passengers. (As the carrier receives from the CBP system a ''cleared'' or ''selectee'' response for a connecting passenger, it may then board that passenger.) The applicable AQQ provision of the regulation is modified to clarify this procedure for connecting passengers with previously issued boarding passes, and the procedure has been added to the interactive batch transmission provision. See §§ 122.49a(b)(1)(ii)(B) and (C) and 122.75a(b)(1)(ii)(B) and (C). CBP notes that this procedure would not apply for connecting passengers who do not yet have boarding passes for the APIS-regulated flight to or from the United States. These passengers would have to report to the carrier's check-in/reservation counter (or other suitable location of the carrier's choosing) for collection of APIS data and issuance of boarding passes. Also, the non-interactive batch transmission option, employed by carriers that are not likely to have connecting flight operations, does not provide for this procedure to collect and transmit passenger data at the gate for connecting passengers. Any such passengers will have to follow the instructions of the carrier (such as, perhaps, reporting to the carrier's check-in/reservation counter).

The provisional boarding pass concept is also applied to any instance where a carrier issues a boarding pass before validating the APIS data, i.e., before the passenger's passport or other travel document is swiped through a machine reader for verification or the travel document data is manually verified by carrier personnel. Until this is done, the carrier may not allow the passenger to board the aircraft. If the air carrier determines during validation that a passenger's data is different from what was used to obtain the boarding pass, the newly presented data must be transmitted to the CBP system for vetting and clearance.

Comment: One commenter asked why any passengers would be delayed and have to be rerouted if the carrier is using AQQ. Another commenter asked for clarification of why, in some instances, CBP would not be able to complete the vetting analysis and clear a passenger prior to departure (push-back).

Response: Under the AQQ process, a ''not-cleared'' response will be provided to the carrier within seconds of transmission of data, but the resolution of a ''not-cleared'' result will require further review of the data to confirm the result or identify a false positive. This will take additional time but could lead to a ''not-cleared'' passenger being cleared for issuance of a boarding pass (possibly as a ''selectee'') in time to make the flight. In the simple case, the vetting result will be produced more quickly than it will in a more complex case. Thus, where the carrier transmits manifest data to the CBP system shortly before the securing of the aircraft, there may not be sufficient time to obtain a further vetting result for a passenger generating a ''not-cleared'' response during the initial vetting process. (This also could happen with batch transmissions, although to a lesser degree of likelihood (compared to a last-minute AQQ transmission) because the deadline for batch transmissions is 30 minutes prior to the securing of the aircraft.) The carrier thus may face a choice between delaying the flight or

departing without the ''not-cleared'' passenger. (Such a passenger could be rebooked but only if cleared during further vetting.) It is expected that carriers will exercise sound business judgment in their manifest data transmission process and take this situation into account (for both batch and AQQ transmissions).

Comment: Seven commenters requested that carriers should be able to make AQQ APIS transmissions and obtain passenger clearances well in advance of departure (push-back), with some recommending as much as four days in advance.

Response: CBP agrees that carriers should be able to make APIS manifest data transmissions well in advance of the APIS regulations' transmission time frames and notes that nothing in the regulations precludes a carrier from doing so. As noted in a previous comment response, the CBP system has the ability to accept certain passenger data up to 72 hours in advance, including APIS data. Such very early transmissions would be more likely under either of the batch transmission options, as AQQ transmissions are more likely to occur in closer proximity to the time or day of the flight. However, as mentioned previously, any early ''cleared'' vetting result obtained in this process is considered provisional by CBP until the passport or other travel document is validated, either by the swiping of the travel document's machine-readable zone or through manual verification by the carrier. Successful validation by the carrier of any passenger holding a provisional boarding pass as herein described (i.e., based on early data transmission and early receipt of a ''cleared'' response) requires that the APIS passenger data checked during validation be identical to the passenger data transmitted early to obtain the boarding pass. Where the data transmitted differs from data presented at validation, the carrier must transmit the new data and obtain vetting clearance on that data. Until that occurs, the carrier may not allow the passenger to board.

As stated in a previous comment response, CBP encourages carriers to develop a process for making early transmissions.

Comment: One commenter asked for clarification on the check-in process when some passengers use kiosks or remote check-in (Internet), or when check-in occurs days in advance of arrival in the United States. Three commenters stated that the final rule must accommodate self-service check-in schemes.

Response: The check-in process begins when the passenger initiates a request for a boarding pass to a flight directly bound for or departing from the United States and can occur at the airport check-in counter, an airport kiosk, or an online Web site within 24 hours of scheduled departure; carriers can issue boarding passes no earlier than 24 hours prior to scheduled departure and only to passengers who have been cleared by the CBP system. The final rule does not preclude passengers from continuing to use any of these check-in processes. However, regardless of the manner by which the passenger checks in, the carrier's obligation under the final rule is to transmit manifests containing required data (batch process), or transmit required manifest data for individual passengers (AQQ), by the required time, obtain a ''cleared'' result from the CBP system before issuing a boarding pass to passengers, and to validate the passenger's data before boarding if validation did not occur previously. The carriers are expected to exercise their sound business judgment to meet these requirements in a manner that best suits their operations and avoids departure delays or other problems. Carriers must continue to comply with TSA requirements as well.

Comment: Several comments concerned the close-out message that the proposed rule would require air carriers to transmit no later than 30 minutes after the securing of the aircraft. One commenter asked if the final rule will require air carriers to send the names of passengers who were previously cleared but were then off-loaded as a result of extenuating circumstances. Four commenters requested clarification regarding the use of a unique identifier for passengers. Two commenters suggested that the regulation be amended to provide the carriers the option of sending either a close-out message listing passengers who did not board the aircraft or a cancellation message for each individual passenger not boarded. Three commenters indicated their preference for sending a cancellation message, stating that there is no need for departure close-out messages. One commenter requested that a close-out message be transmitted 45 minutes after departure (push-back) rather than 30 minutes as proposed. One commenter asked if a carrier using eAPIS would have to submit a final passenger manifest (close-out message).

Response: Under the final rule, an air carrier using one of the interactive options must send a close-out message identifying passengers who were previously cleared for the flight by the CBP system but then, for any reason, did not board the aircraft and make the flight (i.e., were not onboard the airborne aircraft). In the close-out message, the carrier may report, by use of a unique identifier or specific passenger data (such as full name), either all the passengers boarded and making the flight or only the checked-in passengers who did not board and make the flight. The final rule amends the applicable texts to clarify this option. See §§ 122.49a(b)(1)(ii)(B) and (C) and 122.75a(b)(1)(ii)(B) and (C) of this rule. CBP uses the unique identifier or personal data contained in the close-out message to manage the dynamic building of an APIS manifest. The designation of the unique identifier is within the sole discretion of the carrier. The close-out message will not contain any new information, even where passenger data (name) is used instead of a unique identifier. CBP recognizes that carriers using eAPIS will not be able to transmit a unique identifier and thus has amended the non-interactive batch transmission provision of the rule to remove this requirement. See §§ 122.49a(b)(1)(ii)(A) and 122.75a(b)(1)(ii)(A).

CBP disagrees that the close-out message is unnecessary, as the close-out message provides pieces of information that a cancellation message does not, including the individual passengers onboard the aircraft and the total passengers onboard the aircraft. Therefore, under the final rule, a carrier may choose either message for notifying the CBP system that a passenger did not board an aircraft, provided that a carrier sending a cancellation message for that purpose also sends a close-out message for the flight. Also, CBP disagrees that the proposed timing of the close-out message should be changed. The time frames set forth in the final rule ensure that close-out messages are received and processed for short-duration flights prior to their arrival in the United States.

A carrier will not be in compliance with the regulation should a flight arrive in the United States with a passenger onboard who is not on the flight manifest or without a passenger onboard who is on the flight manifest. The close-out message will be similarly evaluated for accuracy, and the carrier will be found in non-compliance for inaccuracies of this kind. The same applies for flights departing from the United States upon their arrival at the foreign port of destination.

Comment: One commenter asked if a carrier would be able to delete a

passenger from a manifest submitted early.

Response: At this time, a carrier cannot delete a passenger from a manifest previously submitted through eAPIS.

Comment: Three commenters asked if an on-demand or charter air carrier would be required to receive an ''all clear'' message from CBP prior to departure. One of these commenters asked how this message would be communicated and whether CBP will issue a ''not-cleared'' message to a third-party provider. Another of these commenters asked if the eAPIS process would accept a separate point of contact for each manifest submitted.

Response: Regarding vetting result messages using the non-interactive batch process (eAPIS), a confirmation message will be returned to the sender, provided that the sender's address is recorded with the CBP system. The CBP system will provide only the status of ''not-cleared'' and ''selectee'' passengers; ''cleared'' passenger results will not be indicated. The absence of a ''not-cleared'' message in the confirmation response, therefore, should be interpreted as a ''cleared'' message for all passengers, and the carrier would be free to depart with all passengers onboard. A ''selectee'' response would require the carrier or TSA (or, in some circumstances, an appropriate foreign authority) to subject the passenger to secondary screening, under applicable TSA requirements, but normally would not impede departure. The person identified as the primary point of contact in a carrier's eAPIS account will receive the message confirmation for each manifest that is submitted. CBP is currently exploring the possibility of enhancing the capability for eAPIS to allow for multiple points of contact to receive confirmations.

Comment: Five commenters stated that CBP should bear the costs of rerouting a passenger if CBP is the party responsible for delaying the passenger.

Response: CBP disagrees. TSA will review and conduct further analysis of ''not-cleared'' results to identify false positives and then use the CBP system to notify the carrier of the disposition. TSA cannot control the time required to resolve ''not-cleared'' messages, and that time will vary. CBP acknowledges that determining check-in times is a business decision that the air carrier industry has very clearly asked to be left free to make. However, CBP cannot guarantee that ''not-cleared'' messages relative to passenger data transmitted as late as 30 minutes prior to securing the aircraft (APIS batch transmission) or just prior to securing the aircraft (AQQ transmissions) will be resolved in time to allow these travelers to make their intended flights. As the timing of check-in and manifest or manifest data transmissions is largely in the control of carriers, CBP will not be responsible for incurring the costs of these business decisions. For this reason, CBP encourages carriers to transmit data for as many passengers as possible as early as practicable.

Comment: Seven commenters asked what the back-up system would be in case of communications or system downtime.

Response: If a carrier or the CBP system experiences difficulties that impede the carrier's efforts to transmit manifests, the carrier's Principal Security Officer (PSO) or Operations Control Center (OCC) should contact the TSA Office of Intelligence to receive further instructions. Under no circumstances is a carrier permitted to issue boarding passes to or board passengers who have not been properly vetted and cleared for boarding (upon generating either a ''cleared'' or ''selectee'' vetting response). System outages will be discussed in detail in CBP's updated user guide currently in preparation.

Comment: One commenter stated that CBP should ensure that all arrangements have been made with foreign law enforcement officials to ensure that personnel are available to deal with passengers denied clearance. Five commenters stated that air carrier personnel should not be primarily responsible for what they perceive as law enforcement activities.

Response: Air carrier personnel will not be responsible to perform law enforcement activities under the final rule. Multiple U.S. Government agencies are continuing to coordinate with international law enforcement officials to ensure that travelers identified on government (terrorist) watch lists are handled expeditiously and with minimal impact on the carrier or the traveling public. Under current regulations and this final rule, carriers are responsible for validating passenger data (confirming that the passenger is the person identified in the travel document presented and that the travel document data matches the data that the carrier transmitted to the CBP system for that passenger) and for ensuring that any passenger generating a ''not-cleared'' message is not permitted to board an aircraft (which is achieved under this final rule by precluding issuance of a boarding pass to such a passenger).

Comment: Two commenters asked if, under the final rule, air carriers would submit crew manifests separately from passenger manifests.

Response: Under the current APIS regulations, transmissions under UN/EDIFACT (United Nations/Electrical Data Interchange for Administration, Commerce, and Trade) for passengers and crew may be included in a single manifest. The final rule does not change that practice. However, under current regulations and this final rule, there are different transmission time requirements for passenger and crew manifests. Thus, because the APIS regulations currently require (and this final rule does not change) transmission of crew (or non-crew) manifests no later than 60 minutes prior to departure (wheels-up) (§§ 122.49b and 122.75b) and passenger manifests no later than 30 minutes prior to the securing of the aircraft, the carrier must be mindful of these different time frames if transmitting a combined manifest (containing both passengers and crew). It is noted that the APIS AQQ transmission option under this final rule is for passengers only, and these transmissions are permitted up to the securing of the aircraft. Any carrier that employs AQQ must submit a crew manifest no later than 60 minutes prior to departure.

Comment: Regarding the NPRM's proposed limit of the size of AQQ passenger record transmissions to ten passengers, one commenter asked that the limit be increased to twenty and another suggested fifty. One commenter stated that there should be no limit.

Response: While the NPRM's background explanation appeared to limit the size of AQQ passenger record transmissions, the final rule does not address this matter. Information on the number of passengers that may be contained in one message transmission is more appropriately covered in the user guide (an update of which is currently in preparation).

Comment: Three commenters sought reassurance that the matching algorithms used for passenger vetting are robustly designed and tested.

Response: CBP assures the commenters that the name-matching algorithms are routinely tested and calibrated to ensure that they are robust without generating an unmanageable workload in positive hits (''not-cleared'' results) for either the government or the carriers.

Comment: One commenter stated that a passenger whose APIS data is insufficient for clearance purposes should be treated as a ''selectee.''

Response: CBP disagrees with this comment. A ''selectee'' vetting result does not preclude the carrier from

issuing a boarding pass to the ''selectee'' passenger. Since the actual vetting status (or security risk level) of a passenger whose data is incomplete or inadequate remains unknown, treating such a passenger as a ''selectee,'' and thus allowing him to board the aircraft, would constitute a security liability. Therefore, the vetting process under the final rule will ensure that such a ''not-cleared'' passenger is prevented from boarding an aircraft (by precluding issuance of a boarding pass) until a vetting result can be obtained.

Comment: One commenter requested that air carriers be able to use, for employing the proposed APIS 60 or AQQ interactive manifest transmission options, any software previously certified by CBP without having to seek additional certification.

Response: CBP notes that previously authorized software is acceptable for air carrier use without additional authorization; however, for the new interactive realm of communication, CBP will require appropriate testing to ensure proper connectivity between CBP and the transmitter before that software can be utilized. This testing and CBP's acknowledgement that the carrier's system is ''interactive capable'' are referred to as ''certification'' in the final rule. CBP notes that carriers not opting for interactive transmission do not require CBP certification.

Comment: Two commenters asked if APIS requirements would be applicable in emergency situations.

Response: The final rule does not change current regulations regarding APIS manifest transmission requirements in emergency situations. Under the current regulations, an aircraft not destined to the United States but diverted there due to an emergency must transmit a passenger manifest no later than 30 minutes prior to the aircraft's arrival at the U.S. port. For a vessel similarly diverted to a U.S. port, the passenger manifest is required prior to the vessel's entry into that port. Both provisions allow that in cases of non-compliance due to an emergency, CBP will take into consideration that the carrier was not equipped to make the APIS transmission (where that is the case) and the circumstances of the emergency situation. See §§ 4.7b(b)(2)(i)(D) and 122.49a(b)(2)(iii).

Comment: One commenter asked whether there would be a trial period to correct systems discrepancies prior to implementation of the interactive transmission systems provided for under the proposed rule.

Response: The final rule will be effective 180 days following its publication in the **Federal Register**. During this 180-day period, carriers will have the opportunity to test their systems with CBP and work cooperatively to correct system discrepancies.

4. Comments From (and on Behalf of) Vessel Carriers and Carriers Operating Within the Outer Continental Shelf (OCS)

Comment: Two commenters asked for clarification on how the rule would affect operations on and movements on the OCS, and three commenters requested that carrier operations involving the transport of OCS employees be exempt from the rule. Two commenters asked if there are APIS reporting requirements for foreign and U.S. personnel (U.S. citizens) who arrive in the United States from a location on the OCS that is considered a U.S. port or place.

Response: Through this final rule, CBP does not intend to change the regime created by existing statutes, regulations, and rulings pertaining to OCS issues. The final rule applies to vessel movements from a U.S. port or place bound for a place on the OCS that is considered ''outside the United States'' (as opposed to a place (e.g., a vessel, rig, or platform) considered a U.S. point by virtue of its attachment to the OCS) under existing statutory authority, and to vessel movements from such a place on the OCS to a U.S. port or place. CBP notes that the final rule applies to similar air carrier movements. In addition, data must be transmitted for all persons, i.e., all travelers (crew members, workers, and others) regardless of citizenship or status under immigration laws, onboard OCS operating vessels and aircraft subject to the APIS regulations. Finally, carriers arriving from a U.S. port or place (on the OCS or not) into another U.S. port or place (on the OCS or not) are not required by CBP to transmit APIS data.

Comment: Two commenters asked if the terms ''foreign area'' used for aircraft and ''foreign port or place'' used for vessels are synonymous for the purposes of transmitting APIS data relative to carriers operating on the OCS.

Response: CBP notes that the term ''foreign area'' is not used in §§ 122.49a, 122.49b, 122.75a, or 122.75b pertaining to aircraft arrivals in and departures from the United States; nor does the term ''foreign port or place'' appear in §§ 4.7b or 4.64 pertaining respectively to vessel arrivals in and departures from the United States. As mentioned previously, the final rule applies to vessel and air carrier movements from a U.S. port or place bound for a place on the OCS that is considered ''outside the United States'' under existing provisions and rules, and to vessel and air carrier movements from such a place on the OCS to a U.S. port or place. However, CBP again notes that there are existing statutory and regulatory provisions, as well as agency rulings, concerning the OCS that provide clarification of this and other issues.

Comment: One commenter asked if vessel carriers would still be able to send updated APIS data no later than 12 hours after departure. One commenter asked if an update could be submitted in the event of a crew change-over.

Response: The final rule does not change the provisions pertaining to amendments to crew manifests. Therefore, vessel operators will still be able to send amendments after submission of the APIS crew manifest up to 12 hours after departure, as provided in § 4.7b(b)(2)(ii) pertaining to vessel arrivals and § 4.64(b)(2)(ii) pertaining to vessel departures. Passenger manifests, however, cannot be amended.

Comment: Two commenters stated that cruise lines should be able to transmit only the names of cruise passengers compiled during booking to meet the requirements of this rule.

Response: CBP disagrees. The eNOA/D submission portal managed by USCG, through which APIS manifest data are transmitted for both arriving and departing vessels, requires that all required data elements be transmitted for each passenger, not merely the names. A vessel carrier may, however, transmit the required data elements in § 4.64(b)(3)(i) through (x) for any portion of the passengers or crew in advance of the transmission deadline, provided that this transmission is followed by timely transmission of a final, complete, and validated manifest (through eNOA/D) no later than 60 minutes prior to departure from the U.S. port.

Comment: One commenter asked if a cruise carrier's receipt of a ''not-cleared'' message from CBP would result in the ship not being allowed to depart on time.

Response: Under the final rule, a cruise ship cannot depart with a passenger onboard whose data has generated a ''not-cleared'' message. Because cruise ships allow passengers to board early (as much as five or six hours early), CBP cannot guarantee that a ''not-cleared'' message will be sent to the carrier before the ''not-cleared'' passenger has boarded (as the passenger could be boarded before the data is transmitted to the CBP system for vetting). Where such a passenger has

boarded the vessel, the carrier must locate and remove him and his baggage from the vessel. CBP believes that the 60-minute transmission requirement is sufficient time to fully vet passengers and crew and allow the carrier to remove a person generating a ''not-cleared'' response; however, CBP cannot guarantee that result in every instance. Where the full vetting process (initial and further vetting, both of which are performed by CBP for commercial vessels) has not been completed prior to scheduled departure, a carrier has the choice to either delay departure and await the results of further vetting or depart on time after removing the ''not-cleared'' passenger in question (and his baggage) from the vessel. Although a business decision, carriers can review their business process to determine the potential benefits related to early transmission of APIS data, which may afford more time for security vetting.

Comment: One commenter requested clarification on how CBP would transmit a ''not-cleared'' message for a crewmember to a vessel operator.

Response: CBP currently generates an APIS confirmation message for vessels transmitting manifests through the eNOA/D portal. The confirmation message, which is sent to the reporting party shown in the manifest, will contain the ''not-cleared'' message for the relevant crew member.

Comment: One commenter requested that reporting requirements for CBP and the USCG regulations be reconciled so that a carrier is able to file a single departure report.

Response: Under its current reporting requirements, USCG does not require notices of departure (departures from the United States) except in certain, limited situations (such as vessels with hazardous cargo). USCG is planning to amend its regulations to generally require a notice of departure. CBP will continue to work with the USCG to ensure that carriers are not subject to duplicative reporting requirements, just as was done for arriving vessels.

Comment: Two commenters requested that the proposed 60-minute prior to departure requirement be amended, stating that it is too burdensome for cruise lines to meet. One commenter stated that the 60-minute requirement is unworkable for operations on the OCS.

Response: CBP disagrees. Nothing in the final rule precludes a vessel carrier from transmitting available APIS data in advance of the 60-minute deadline for manifest transmissions. Early transmission and vetting of passenger and crew member data will facilitate and enhance the effectiveness of the process. Even where a carrier waits until 60 minutes prior to departure to transmit a single, complete manifest, the 60-minute window is expected to provide, in most instances, sufficient time for CBP to identify and notify the carrier of any ''not-cleared'' vetting results and to complete vetting, and for the carrier to locate and remove from the vessel the passengers and/or crew members who generated the ''not-cleared'' responses (along with their baggage). A shorter time for completion of the process would risk failure to achieve the desired security goal (preventing vessel departures with a high-risk passenger or crew member onboard) and would increase the risk of a delayed departure.

CBP believes that carriers operating on the OCS will be able to comply with the 60-minute requirement without an unacceptable impact on their operations.

Comment: One commenter requested that cruise lines be permitted to implement AQQ.

Response: CBP and USCG will continue working to develop manifest transmission methods that do not impose duplicative submission requirements on vessel carriers; this will include exploring with vessel carriers the feasibility of developing an interactive procedure for these carriers.

Comment: One commenter asked whether transmission of APIS data is required for voyages between two U.S. ports.

Response: Carriers are not required to transmit APIS data for voyages between two U.S. ports.

Comment: One commenter asked if a vessel carrier would be required to sit at the dock for 60 minutes following submission of APIS data awaiting clearance to depart (from a U.S. port).

Response: Under the final rule, the APIS transmission must occur no later than 60 minutes prior to the intended vessel departure. A confirmation message will be sent to the reporting party shown in the manifest. If the confirmation message clears all crewmembers and passengers on board, the vessel can depart regardless of whether the full 60-minute window has elapsed. If the confirmation message includes a ''not-cleared'' result, the carrier may wait until further vetting can be completed. If the further vetting result clears the ''not-cleared'' traveler within the 60-minute window, the carrier is free to depart.

B. Comments Pertaining to the Regulatory Assessment

A ''Regulatory Assessment'' of the proposed APIS rule was posted on the CBP Web page and in the Federal Docket Management System with the NPRM. The following are comments received on that analysis and CBP's responses to those comments:

Comment: Two commenters stated that a satisfactory assessment of costs and benefits cannot be made until the system and procedures have been fully tested.

Response: Executive Order 12866 and OMB Circular A–4 require that an agency conduct an economic analysis for all significant regulatory actions, as defined under section 3(f) of that Executive Order. This analysis must contain an identification of the regulatory baseline as well as the anticipated costs and benefits of the rule on relevant stakeholders. The analysis prepared for the NPRM was reviewed by the Office of Management and Budget (OMB).

Comment: One commenter argued that the costs estimated for passengers and air carriers relative to prohibiting boarding within 15 minutes of departure are too low and provided its own analysis. The commenter noted that air carriers, not the commenter, would have to provide the data necessary to reassess the economic impacts.

Response: CBP appreciates this comment and the detail that accompanied the estimate provided in the comment. However, the commenter presented an estimate that was overly pessimistic and represented an absolute ''worst-case'' scenario that would rarely, if ever, be realized.

Comment: Five commenters stated that the estimated delay of 4 hours for passengers who would not make their flights was too low.

Response: CBP notes that a sensitivity analysis was conducted that estimated the costs to passengers of an eight-hour delay. This analysis has been retained in the final ''Regulatory Assessment'' available in the public docket for this rule in addition to an analysis of a 24-hour delay.

Comment: One commenter stated that the estimated annual two percent increase in international air passengers was ''pessimistic'' and underestimated overall costs for the industry.

Response: CBP agrees with this comment. The ''Regulatory Assessment'' has been modified to account for a five percent (5%) annual increase in international air passengers.

Comment: One commenter stated that the percentage of passengers who would miss their connecting flights under the AQQ option with the 15-minute transmission deadline should be closer to two percent (2%) rather than the 0.5 percent estimated in the ''Regulatory Assessment,'' based on limited testing

the commenter has conducted. Another commenter stated that the 0.5 percent estimate is too low.

Response: CBP appreciates the information provided by the commenters. CBP notes that under the final rule, carriers will be able to transmit APIS data using the AQQ option up to the time when the carrier secures the aircraft, rather than 15 minutes prior to departure. This modification should help connecting passengers make their intended flights and minimize delay. Thus, CBP has retained the 0.5 percent estimate to account for those few passengers that may still miss their connecting flights under the revised AQQ transmission requirements in the final rule.

Comment: One commenter stated that the ''Regulatory Assessment'' does not account for investments that airports will have to make to cope with earlier arrivals and extended checking delays.

Response: This comment is accurate. However, it is virtually impossible to estimate the changes that would occur in airports throughout the world as a result of this final rule. This is because CBP does not know how many airports, if any, may reconfigure ticketing and waiting areas, the number of carriers that will use the batch APIS transmission method versus the AQQ transmission method (which should result in fewer delays to passengers), the number of international passengers that would be affected in each airport, and daily peaks in passenger volume that may affect possible ''crowding'' in the ticketing area and other areas of the airport. While CBP cannot quantify these potential impacts on airports, they are important to note, and a qualitative discussion of these impacts is included in the final ''Regulatory Assessment.''

Comment: One commenter stated that the ''Regulatory Assessment'' does not account for international passengers who are making connecting flights in the United States.

Response: CBP disagrees with this comment. The percentage estimated in the ''Regulatory Assessment'' reflects international passengers connecting on flights made in both foreign and U.S. airports.

Comment: Two commenters stated that the hourly cost for a delay is closer to $10,000 than to the $3,400 estimated in the ''Regulatory Assessment.'' Another commenter stated that the hourly cost for a delay is closer to $17,000.

Response: CBP appreciates these comments and has revised the hourly cost of delay using an estimate of $15,000.

Comment: One commenter stated that the offshore industry would experience hours of delay as a result of the rule and this was not accounted for in the ''Regulatory Assessment.''

Response: CBP acknowledges that costs to the offshore industry of delay were not included in the ''Regulatory Assessment.'' This is because vessel operators do not board passengers and crew as air carriers do and should not experience delays as a result of this rule. As stated elsewhere, if the confirmation message received from CBP clears all crewmembers and passengers on board, the vessel can depart regardless of whether the full 60-minute window has elapsed. Furthermore, nothing in the regulation as proposed or finalized precludes a carrier from transmitting available APIS data well in advance of the 60-minute manifest transmission deadline.

Comment: One commenter stated that small carriers were much more likely to experience delays than large carriers.

Response: CBP disagrees with this comment. As stated in the ''Regulatory Assessment,'' while large air carriers have connecting flights where affected passengers could face short layover times, small air carriers operate predominantly on charter schedules and make point-to-point trips without connecting flights. With respect to originating passengers, CBP expects that some of them will need to modify their behavior by arriving at the airport earlier than they customarily do. Occasionally, a passenger may not make a flight as a result of the rule, but the percentage is expected to be much lower than for passengers on large carriers. Furthermore, as discussed elsewhere, the transmission time for small carriers has been modified from 60 minutes prior to departure (meaning push-back from the gate) to 30 minutes prior to securing the aircraft. Should a ''cleared'' response be received within that 30-minute window, the carrier may board the cleared passengers and depart.

Comment: Two commenters stated that the cost estimated for ticket-agent time due to delay is too low because it does not include the costs for rerouting a passenger and arranging compensation for the passenger (hotel, meals).

Response: CBP did include the agent time required to reroute a passenger on either the same carrier or another carrier in estimating this cost. However, the 15-minute time estimated does not account for the agent arranging compensatory accommodations for a passenger in the event of a lengthy delay. CBP has included a sensitivity analysis in the final ''Regulatory Assessment'' that estimates the cost of 1 hour of combined ticket-agent time to accommodate a passenger's delay.

Comment: One commenter stated that under the ''No Action'' alternative, the statement that this allowed high-risk passengers to board aircraft is misleading, arguing that their carrier has never had an aircraft turned back or diverted.

Response: While CBP commends the commenter's record, it is clear that under the status quo, high-risk passengers are able to board aircraft bound for the United States. Many such instances were described in the preamble to the proposed rule and in the ''Regulatory Assessment.''

Comment: One commenter stated that privacy issues must be studied in depth and be transparent. One commenter stated that the current Privacy Impact Assessment (PIA) is no longer valid because the rule presents an entirely new use of data.

Response: The privacy impacts of collecting APIS data have been studied in depth, and both a PIA and a System of Records Notice (SORN) will be published in conjunction with this final rule. Both the SORN and PIA have been reviewed and approved by the Office of Management and Budget (OMB) in concurrence with this final rule.

Comment: One commenter stated that the Regulatory Flexibility Act (RFA) analysis erroneously omitted costs to passengers.

Response: CBP disagrees with this comment. An individual is not a small entity under the Regulatory Flexibility Act.

IV. Conclusion and Summary of Changes Made to the APIS Regulations by This Final Rule

Based on the comments received, and CBP's further consideration of the matter, CBP concludes that the proposed amendments, with the modifications discussed in the comment reponses above (and included in Section VI of this document), should be adopted as final to enhance national security by providing a heightened level of security for the commercial air and vessel travel industries. Achieving the level of security ensured under the regulatory amendments set forth in this rule (see ''Changes Made to the APIS Regulation by this Final Rule'' section below) places DHS in a better position to: (1) Fully vet, as appropriate, passenger and crew member information prior to departure as required by IRTPA; (2) effectively coordinate with carrier personnel and domestic or, where appropriate, foreign government authorities in order to take appropriate action warranted by the threat; (3) more

effectively prevent an identified high-risk traveler (known or suspected terrorist) from becoming a threat to passengers, crew, aircraft, vessels, or the public; and (4) thereby ensure that the electronic data transmission and vetting process required under the CBP APIS regulations comports to a greater extent with the purposes of ATSA, EBSVERA, and IRTPA.

This final rule amends certain sections of the CBP APIS regulations to provide the following changes to the electronic passenger manifest transmission process applicable to arriving and departing commercial aircraft (see §§ 122.49a and 122.75a, respectively) and to the passenger and crew member manifest transmission process for departing commercial vessels (see § 4.64):

1. The NPRM proposed that the current APIS regulation's definition of ''departure'' for aircraft en route to, departing from, continuing within, and overflying the United States (for purposes of §§ 122.49a, 122.49b, 122.49c, 122.75a, and 122.75b) be amended to provide that departure occurs at the moment the aircraft is pushed back from the gate. As explained in the ''Comments'' section, CBP is not pursuing this proposed change, and the final rule retains the current regulation's definition of ''departure'' as ''wheels-up.'' See § 122.49a(a). However, for purposes of establishing a (relatively) fixed moment for calibrating the timing of manifest transmissions, CBP has determined to use the moment at which the aircraft's doors are closed and secured for flight (referred to as ''the securing of the aircraft''). This action (securing of the aircraft) occurs for all flights and applies to all aircraft, including those that do not push back from a gate. Consequently, the final rule amends § 122.49a(a) by adding the definition for ''securing the aircraft.'' The current regulation's definition of ''departure'' (wheels-up) will continue to apply to manifest transmissions for crew and non-crew, and the definition of ''securing the aircraft'' will not apply to these provisions.

2. For flights en route to and departing from the United States, air carriers will have discretion to choose one of three options for transmitting passenger manifests to the CBP system, as follows: (a) Transmitting batch passenger manifests to the CBP system by means of a non-interactive transmission system no later than 30 minutes prior to the securing of the aircraft (the APIS–30 non-interactive option); (b) transmitting batch passenger manifests via a CBP-certified electronic data interchange system with interactive communication capability no later than 30 minutes prior to the securing of the aircraft (the APIS–30 interactive option); and (c) transmitting, via a CBP-certified electronic data interchange system with interactive communication capability, passenger manifest data relative to each passenger in real time, i.e., as each passenger checks in for the flight, up to the moment of the securing of the aircraft (the AQQ option). See §§ 122.49a(b)(1) (ii)(A), (B), and (C); 122.49a(b)(2)(i)(A) and (B); 122.75a(b)(1)(ii)(A), (B), and (C); and 122.75a(b)(2)(i)(A) and (B).

Though not explicit in the texts, DHS is taking over, from the carriers, the responsibility to perform watch list vetting. Under the process implemented with this final rule, DHS (i.e., CBP and TSA, as explained in this document) will perform the pre-departure vetting of passenger and crew manifest data for APIS purposes. The air carriers will no longer perform this function with respect to flights subject to the APIS regulations.

3. An air carrier opting to employ one of the interactive electronic transmission options (see 2(b) and (c) above) must obtain CBP certification of its interactive system. Certification is conferred by CBP upon testing of the carrier's system and confirmation that it is capable of functioning as configured for the interactive option chosen (or both options if both chosen). These air carriers may not transmit manifests interactively until certified. See §§ 122.49a(b)(1)(ii)(E) and 122.75a(b)(1)(ii)(E).

4. The final rule makes clear that a carrier may be certified to make both interactive batch and AQQ transmissions, for the same or different flights. See §§ 122.49a(b)(1)(ii)(D) and 122.75a(b)(1)(ii)(D).

5. Air carriers that do not choose an interactive option for transmitting passenger manifests (see 2(a) above) will continue to make transmissions via a non-interactive system. Certification is not required, and CBP will communicate with these carriers by a non-interactive means. See §§ 122.49a(b)(1)(ii)(A) and 122.75a(b)(1)(ii)(A).

6. The final rule makes clear that a carrier, at its discretion, may make more than one batch transmission. See §§ 122.49a(b)(1)(ii)(A) and (B) and 122.75a(b)(1)(ii)(A) and (B). The current regulation does not preclude this practice, but appears to contemplate that only one manifest is transmitted. Any single batch transmission covering all passengers checked in for the flight must be transmitted by the required time (no later than 30 minutes prior to the securing of the aircraft) and must contain all required data elements for the passengers it covers. Multiple batch transmissions must, together, cover all passengers checked in for the flight and individually contain all required data elements. Carriers employing this practice are not precluded from transmitting a batch manifest that covers passengers included on a previously transmitted manifest.

7. Upon the effective date of this final rule, any carrier certified by CBP will be cleared to transmit manifests via one or both of the interactive transmission options. CBP will allow a certified carrier to transmit manifests or manifest data by interactive means prior to the effective date of this rule. Upon the effective date, carriers not certified by CBP will be required to transmit batch passenger manifests no later than 30 minutes prior to the securing of the aircraft via a non-interactive transmission method. Once any of these latter carriers subsequently obtains certification, they may commence transmissions via the interactive transmission option chosen. (See the **DATES** section of this final rule document.)

8. Upon receipt of a batch passenger manifest from a carrier using the interactive batch transmission option or an individual passenger's manifest data from a carrier employing AQQ, the CBP system will conduct an automated vetting procedure and will send to the carrier, by interactive means, a ''cleared,'' ''not-cleared,'' or ''selectee'' message (instruction or response). A ''not-cleared'' response will be sent relative to any passenger warranting further security analysis (as an exact match to data contained in the No-Fly terrorist watch list, a possible match, or an inadequate record that cannot be vetted). A passenger identified as a ''selectee'' will be so designated by the carrier and subject to secondary screening, in accordance with applicable TSA requirements. See §§ 122.49a(b)(1)(ii) and 122.75a(b)(1)(ii).

The same procedure applies to carriers using the non-interactive batch transmission option, except that the CBP system does not send ''cleared'' messages to these carriers; CBP sends a confirmation message with any ''not-cleared'' and ''selectee'' vetting results indicated. Where all passengers are cleared, the confirmation message will be without vetting results, thereby indicating that the carrier can issue boarding passes and the passengers are cleared for departure.

9. Regardless of the manifest transmission option employed (APIS–30 non-interactive, APIS–30 interactive, or

AQQ), a carrier will not issue a boarding pass to any passenger subject to a ''not-cleared'' instruction issued by the CBP system during initial vetting, will not load onto the aircraft such passenger's baggage, and will remove such passenger's baggage if already loaded. See §§ 122.49a(b)(1)(ii)(A), (B), and (C) and 122.75a(b)(1)(ii)(A), (B), and (C). The carrier must not transport the baggage of a ''not-cleared'' passenger unless he is later (during further vetting) cleared and boarded. The carrier will issue a boarding pass to a ''selectee'' passenger with an instruction that secondary screening is required.

10. Regardless of the transmission option employed, a carrier must, in accordance with TSA requirements, contact TSA for the purpose of resolving a ''not-cleared'' instruction by providing, if necessary, any available relevant information, such as a physical description. See §§ 122.49a(b)(1)(ii)(A), (B), and (C) and 122.75a(b)(1)(ii)(A), (B), and (C).

11. Regardless of the transmission option employed by a carrier, any passenger subject to a ''not-cleared'' initial vetting response will be subject to further vetting, and TSA will notify the carrier that the passenger has been cleared or downgraded to ''selectee'' status if warranted by the results of the additional security analysis. Carriers will not be notified by CBP messaging where further vetting confirms a ''not-cleared'' instruction (see §§ 122.49a(b)(1)(ii)(A), (B), and (C) and 122.75a(b)(1)(ii)(A), (B), and (C)), but CBP will inform the carrier in accordance with the resolution process mentioned immediately above.

12. A carrier employing one or both of the interactive transmission options (batch or AQQ) will transmit to the CBP system, no later than 30 minutes after the securing of the aircraft, a unique identifier or specific passenger data (typically a name) for any passenger that checked in for the flight but was not boarded for any reason. See §§ 122.49a(b)(1)(ii)(B) and (C) and 122.75a(b)(1)(ii)(B) and (C). These carriers may so identify only those passengers who checked in but did not board the flight or all passengers that were checked in and boarded the flight. A carrier using the non-interactive transmission option (eAPIS normally) is not required to send a close-out message.

13. Vessel carriers must transmit passenger and crew manifests for vessels departing from the United States no later than 60 minutes prior to departure. See § 4.64(b)(2)(i). While the APIS regulation concerning vessels departing from the United States is not further amended, the APIS manifest transmission and vetting process for these vessels is similar to that for aircraft to the following extent: the vessel carrier may transmit multiple batch manifests; the CBP system will conduct the vetting of manifest data in a two-stage process; the CBP system will send to the carrier ''cleared'' and ''not-cleared'' instructions to the carrier after initial automated vetting; the data for all ''not-cleared'' passengers and crew members is subject to the further vetting process; CBP will contact the carrier where the results of further vetting clear an initially ''not-cleared'' passenger or crew member for boarding. A carrier also must not allow a vessel to depart with a ''not-cleared'' passenger or crew member, or his baggage or belongings, on board.

V. Regulatory Requirements

A. Executive Order 12866 (Regulatory Planning and Review)

This rule is considered to be an economically significant regulatory action under Executive Order 12866 because it may result in the expenditure of over $100 million in any one year. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB). The following summary presents the costs and benefits of the rule plus a range of alternatives considered. The complete ''Regulatory Assessment'' can be found in the docket for this rulemaking (*http://www.regulations.gov;* see also *http://www.cbp.gov).*

Summary

Air carriers and air passengers will be the parties primarily affected by the rule. For the 30-minute option, costs will be driven by the number of air travelers that will need to arrive at their originating airports earlier and the number of air travelers who miss connecting flights and require rerouting as a result. For AQQ, costs will be driven by implementation expenses, data transmission costs, and a small number of air travelers who miss connecting flights.

CBP estimates a range of costs in this analysis. For the high end of the range, we assume that passengers will provide APIS data upon check-in for their flights and that all carriers will transmit that data, as an entire passenger and crew manifest, to CBP at least 30 minutes prior to the securing of the aircraft. We estimate that this will result in 1 percent of passengers on large carriers and 0 percent of passengers on small carriers missing connecting flights and needing to be rerouted, with an average delay of 4 hours. We also estimate that 5 percent of originating passengers will need to arrive 15 minutes earlier than usual in order to make their flights. For the low end of the range, we assume that all large air carriers will implement AQQ to transmit information on individual passengers as each check in. We estimate that this will drive down the percentage of passengers requiring rerouting on large carriers, attributable to this rulemaking, to 0.5 percent. The percentage on small carriers remains 0 percent because we assume that small carriers will not implement AQQ; rather, they will continue to submit manifests at least 30 minutes prior to the securing of the aircraft through eAPIS, CBP's web-based application for small carriers. Thus, costs for small air carriers are the same regardless of the regulatory option considered.

The endpoints of our range are presented below. As shown, the present value (PV) costs of the rule are estimated to range from $827 million to $1.2 billion over the 10 years of the analysis (2006–2016, 2005 dollars, 7 percent discount rate).

COSTS OF THE FINAL RULE

[$millions, 2006–2016, 2005 dollars]

	High estimate (30-minute option)			Low estimate (APIS quick query option)		
	Large carriers	Small carriers	Total	Large carriers	Small carriers	Total
First-Year Costs (2006)	$116	$1	$117	$184	$1	$185
Average Recurring Costs	150	2	152	92	2	94
10-Year PV Costs (7%)	1,168	14	1,182	813	14	827

COSTS OF THE FINAL RULE—Continued

[$millions, 2006–2016, 2005 dollars]

	High estimate (30-minute option)			Low estimate (APIS quick query option)		
	Large carriers	Small carriers	Total	Large carriers	Small carriers	Total
10-Year PV Costs (3%)	1,413	17	1,430	959	17	976

We quantify four categories of benefits, or costs that could be avoided, under the final rule: costs for conducting interviews with identified high-risk individuals, costs for deporting a percentage of these individuals, costs of delaying a high-risk aircraft at an airport (either at the origination or destination airport), and costs of rerouting aircraft if high-risk individuals are identified after takeoff. The average recurring benefits of the rule are an estimated $14 million per year. Over the 10-year period of analysis, PV benefits are an estimated $105 million at a 7 percent discount rate ($128 million at a 3 percent discount rate).

The primary impetus of this rule, however, is the security benefit afforded by a more timely submission of APIS information. Ideally, the quantification and monetization of the beneficial security effects of this regulation would involve two steps. First, we would estimate the reduction in the probability of a successful terrorist attack resulting from implementation of the regulation and the consequences of the avoided event (collectively, the risk associated with a potential terrorist attack). Then we would identify individuals' willingness to pay for this incremental risk reduction and multiply it by the population experiencing the benefit. Both of these steps, however, rely on key data that are not available for this rule.

In light of these limitations, we conduct a ''breakeven'' analysis to determine what change in the reduction of risk would be necessary in order for the benefits of the rule to exceed the costs. Because the types of attack that would be prevented by this regulation are not entirely understood, we present a range of potential losses that are driven by casualty estimates and asset destruction. We use two estimates of a Value of a Statistical Life (VSL) to represent an individual's willingness to pay to avoid a fatality onboard an aircraft, based on economic studies of the value individuals place on small changes in risk: $3 million per VSL and $6 million per VSL. Additionally, we present three attack scenarios. Scenario 1 explores a situation where only individuals are lost (no destruction of physical property). Scenario 2 explores a situation where individuals are lost and the aircraft is destroyed. Scenario 3 explores a situation where individuals are lost and substantial destruction of physical capital is incurred.

We subtract the annualized benefits of the rule (7 percent discount rate over 10 years) from the annualized costs (high and low estimates) and divide these net costs by the value of casualty and property losses avoided to calculate an annual risk reduction range that would be required for the benefits of the rule to at least equal the costs.

The annual risk reductions required for the rule to breakeven are presented below for the three attack scenarios, the two estimates of VSL, and a range of casualties. As shown, depending on the attack scenario, the VSL, and the casualty level, risk would have to be reduced 0.2 (Scenario 3, 3,000 casualties avoided) to 44.2 percent (Scenario 1, 100 casualties avoided) in order for the rule to breakeven.

ANNUAL RISK REDUCTION REQUIRED (%) FOR NET COSTS TO EQUAL BENEFITS

[Annualized at 7 percent over 10 years]

Casualties avoided	Scenario 1: loss of life only	Scenario 2: loss of life and aircraft	Scenario 3: loss of life and catastrophic loss of property
$3M VSL:			
100	30.4–44.2	29.2–42.5	0.4–0.6
250	12.2–17.7	12.0–17.4	0.4–0.6
500	6.1–8.8	6.0–8.8	0.4–0.6
1,000	3.0–4.4	3.0–4.4	0.4–0.5
3,000	1.0–1.5	1.0–1.5	0.3–0.4
$6M VSL:			
100	15.2–22.1	14.9–21.7	0.4–0.6
250	6.1–8.8	6.0–8.8	0.4–0.6
500	3.0–4.4	3.0–4.4	0.4–0.5
1,000	1.5–2.2	1.5–2.2	0.3–0.5
3,000	0.5–0.7	0.5–0.7	0.2–0.3

See the ''Regulatory Assessment'' at *http://www.regulations.gov* or *http://www.cbp.gov* for details of these calculations.

Regulatory Alternatives

CBP considered a number of regulatory alternatives to the rule. Complete details regarding the costs and benefits of these alternatives can be found in the ''Regulatory Assessment'' available in the docket for this rule (*http://www.regulations.gov*; see also *http://www.cbp.gov*). The following is a summary of these alternatives:

(1) Do not promulgate any further manifest transmission requirements (No Action)—the baseline case where carriers would continue to submit APIS manifests for arriving aircraft passengers 15 minutes after departure and, for departing aircraft passengers, 15 minutes prior to departure. There are no additional costs or benefits associated with this alternative. High-risk passengers would continue to board aircraft both destined to and departing from the United States, and instances of such aircraft departing with a high-risk passenger onboard would continue. As explained previously in this document, these results are inconsistent with the protective security objectives and/or mandates of ATSA, EBSVERA, and IRTPA. Because this is the status quo, and therefore has no additional costs or benefits, it is not analyzed further.

(2) A 30-minute transmission requirement and implementation of AQQ—this is the final rule, discussed earlier in this document, which generally requires carriers to either submit batch manifests 30 minutes prior to the securing of the aircraft or, if implementing AQQ, transmit manifest data for each passenger as he checks in for the flight, up to the securing of the aircraft. If flying on a carrier using AQQ, individuals would be queried while they checked in and would be prevented (denied a boarding pass) from continuing to check in or having their bags checked if not cleared by CBP. If flying on a carrier using the APIS 30 batch manifest transmission option, individuals not cleared by CBP would not be issued a boarding pass. High-risk individuals would thus not enter passenger screening or the departure gate area.

First-year costs are $118–185 million, average recurring costs are $94–152 million per year, and 10-year present value costs are $827 million–1.2 billion (7 percent discount rate) and $976 million–1.4 billion (3 percent discount rate).

(3) A 60-minute transmission requirement—this is the rule as proposed, without the AQQ option. Carriers would submit their manifests in their entirety at least 60 minutes prior to departure. CBP assumes that 2 percent of passengers on large carriers and 0.25 percent of passengers on small carriers will be delayed an average of 4 hours and will need to be rerouted. CBP also assumes that 15 percent of passengers would need to arrive at their originating airport an average of 15 minutes earlier than normal to make their flights. Benefits will include interview costs avoided, deportation costs avoided, delay costs avoided, and diversion costs avoided, as well as the non-quantified security benefits that are the impetus for this rule.

Based on comments to the proposed rule, and reconsideration of the matter by CBP in light of lessons learned during the manifest transmission and security vetting process developed after the exposed bomb plot in the United Kingdom last summer, this alternative was rejected as unnecessarily burdensome for air carriers. CBP now believes that a 30-minute transmission requirement provides greater flexibility for air carriers while still providing the level of security sought for this rule.

First-year costs are $265 million, average recurring costs are $343 million per year, and 10-year present value costs are $2.7 billion (7 percent discount rate) and $3.2 billion (3 percent discount rate).

Benefits are higher than the No Action alternative because the high-risk individual will be identified prior to boarding. In addition to this security benefit, there is an estimated $14 million in costs avoided annually.

(4) A 120-minute transmission requirement—his rule would require carriers to submit manifests 120 minutes prior to departure. The costs would be higher than under the final rule because originating passengers, not just connecting passengers, would now be affected. High-risk passengers would be prevented from boarding aircraft. CBP would be able to more easily coordinate and plan a response to a hit on the watch lists well before the boarding process began.

This alternative would be quite disruptive because even though passengers and carriers would have the predictability of a pre-determined transmission time, passenger check-in at the original departure airport would be greatly affected. Instead of passengers checking in 2 hours prior to departure, carriers would have to advise passengers to arrive even earlier to assure timely manifest transmission.

We assume that 20 percent of passengers on large carriers and 5 percent of passengers on small carriers will be delayed an average of 6 hours and will need to be rerouted. We assume that 30 percent of passengers would need to arrive at the airport 1 hour earlier than previously. First-year costs are $3.4 billion, average recurring costs are $4.3 billion per year, and 10-year present value costs are $33.8 billion (7 percent discount rate) and $40.8 billion (3 percent discount rate).

Benefits are higher than the No Action alternative because a high-risk individual would be prevented from boarding or departing on an aircraft destined to or departing from the United States. Benefits are slightly higher than under the final rule because in some instances, the high-risk passenger's baggage would not reach the aircraft. Otherwise, the results achieved do not change appreciably given the extra time. Nonetheless, this procedure would be consistent with the protective security purposes of ATSA, EBSVERA, and IRTPA.

The following table summarizes the costs and benefits of the regulatory alternatives:

COMPARISON OF COSTS AND BENEFITS OF THE RULE AND REGULATORY ALTERNATIVES

	Final rule		60-minute APIS	120-minute APIS
	30-minute option	AQQ option		
First-year costs	$118 million	$185 million	$265 million	$3.4 billion.
Average recurring costs	$152 million	$94 million	$343 million	$4.3 billion.
10-year PV costs (7%)	$1.2 billion	$827 million	$2.7 billion	$33.8 billion.
10-year PV costs (3%)	$1.4 billion	$976 million	$3.2 billion	$40.8 billion.
Average cost per passenger.	$0.36–$1.55	$0.36–$1.03	$1.37–$3.45	$17.39–$43.81.
Benefits comparison to No Action.	Higher (risk identified prior to boarding).	Higher (risk identified prior to boarding).	Higher (risk identified prior to boarding).	Higher (risk identified prior to boarding).
Benefits comparison to Final Rule.			Comparable (security benefits + $14 million in costs avoided annually).	Comparable (security benefits + $14 million in costs avoided annually).

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/index.html*), DHS (through CBP) has prepared an accounting statement showing the classification of the expenditures associated with this rule. The table provides our best estimate of the dollar amount of these costs and benefits, expressed in 2005 dollars, at three percent and seven percent discount rates. We estimate that the cost of this rule will be approximately $126.8 million annualized (7 percent discount rate) and approximately $126.2 million annualized (3 percent discount rate). Quantified benefits are $14.9 million annualized (7 percent discount rate) and $15.0 million annualized (3 percent discount rate). The non-quantified benefits are enhanced security.

ACCOUNTING STATEMENT: CLASSIFICATION OF EXPENDITURES, 2006 THROUGH 2016 (2005 DOLLARS)

	3% discount rate	7% discount rate
COSTS		
Annualized monetized costs	$126.2 million	$126.8 million.
Annualized quantified, but un-monetized costs	None	None.
Qualitative (un-quantified) costs	None	None.
BENEFITS		
Annualized monetized benefits	$15.0 million	$14.9 million.
Annualized quantified, but un-monetized costs	None	None.
Qualitative (un-quantified) costs	Enhanced security	Enhanced security.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Act

We have examined the impacts of this rule on small entities as required by the Regulatory Flexibility Act. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

CBP has identified 773 small U.S. air carriers that could be affected by the rule. CBP does not expect these carriers to experience great economic impacts as a result of the rule. Small carriers do not need to modify their reservation systems, their transmission methods, nor do they have many connecting passengers that may miss their flights and require rerouting. CBP estimates that, at most, 5 percent of passengers on small carriers will be affected by this rule annually. In the 2005 APIS Rule, we estimated that small carriers transport an average of 300 passengers annually. As calculated in the ''Regulatory Assessment,'' the total cost of delay per passenger is $118.97, and only $4.57 of this is incurred by the air carrier. Initial analysis for the proposed rule estimated the impacts of a 60-minute prior to departure transmission requirement. Now that the transmission requirement has changed for this final rule to 30-minutes prior to the securing of the aircraft, we estimate there will be no direct impacts to small carriers. The costs of arriving earlier than customary are incurred only by the passenger.

We conclude, therefore, that this rule will not have a significant economic impact on a substantial number of small entities.

The complete analysis of impacts to small entities is available on the CBP Web site at: *http://www.regulations.gov;* see also *http://www.cbp.gov.*

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the UMRA, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for meaningful and timely opportunity to provide input in the development of regulatory proposals.

This final rule would not impose any cost on small governments or significantly or uniquely affect small governments. However, as stated in the ''Executive Order 12866'' section of this document, CBP has determined that the rule would result in the expenditure by the private sector of $100 million or more (adjusted annually for inflation) in any one year and thus would constitute a significant regulatory action. Consequently, the provisions of this rule constitute a private sector mandate under the UMRA. CBP's analysis of the cost impact on affected businesses, summarized in the ''Executive Order 12866'' section of this document and available for review by accessing *http://www.regulations.gov;* see also *http://www.cbp.gov,* is incorporated here by reference as the assessment required under Title II of the UMRA.

D. Executive Order 13132 (Federalism)

This final rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement.

E. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988. That Executive Order requires agencies to conduct reviews, before proposing legislation or promulgating regulations, to determine the impact of those proposals on civil justice and potential issues for litigation. The Order requires that agencies make reasonable efforts to ensure that a regulation clearly identifies preemptive effects, effects on existing Federal laws and regulations, any retroactive effects of the proposal, and other matters. CBP has determined that this regulation meets the requirements of Executive Order 12988 because it does not involve retroactive effects, preemptive effects, or other matters addressed in the Order.

F. National Environmental Policy Act

CBP has evaluated this rule for purposes of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*). CBP has determined that an environmental statement is not required, since this action is non-invasive and there is no potential impact of any kind. Record of this determination has been placed in the rulemaking docket.

G. Paperwork Reduction Act

In connection with the final rule published by DHS/CBP in April 2005, and discussed in this rule, a Paperwork Reduction Act (PRA) analysis was set forth concerning the information collection involved under that rule (*see* OMB No. 1651–0088). The analysis pertained to the information collection contained in 19 CFR 4.7b, 4.64, 122.49a, 122.49b, 122.49c, 122.75a, and 122.75b. The final rule published today, which amends the regulation as amended by the April 2005 final rule, affects only the timing and manner of the submission of the information already required under the regulation. The collection of information in this document is contained in 19 CFR 4.64, 122.49a, and 122.75a. An Information Collection Report reflecting a change in the collection burden due to this final rule has been submitted to OMB for review, in accordance with the PRA, under OMB 1651–0088.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Estimated annual reporting and/or recordkeeping burden: 30,669 hours.

Estimated average annual burden per respondent/recordkeeper: 129 minutes.

Estimated number of respondents and/or recordkeepers: 14,265.

Estimated annual frequency of responses: 129.

H. Signing Authority

This amendment to the regulations is being issued in accordance with 19 CFR 0.2(a) pertaining to the authority of the Secretary of Homeland Security (or his delegate) to prescribe regulations not related to customs revenue functions.

I. Privacy Statement

A Privacy Impact Assessment (PIA) was published in the **Federal Register** (70 FR 17857) in conjunction with the April 7, 2005, APIS Final Rule (70 FR 17820). To address the changes made in this final rule, DHS is publishing an update to the APIS PIA on its Web site. DHS is preparing a separate SORN for APIS for publication in conjunction with this final rule.

List of Subjects

19 CFR Part 4

Aliens, Customs duties and inspection, Immigration, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Commercial aircraft, Customs duties and inspection, Entry procedure, Reporting and recordkeeping requirements, Security measures.

Amendments to the Regulations

■ For the reasons stated in the preamble, parts 4 and 122 of the CBP regulations (19 CFR parts 4 and 122) are amended as follows:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The general authority citation for part 4 and the specific authority citation for section 4.64 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 2071 note; 46 U.S.C. 6015.

* * * * *

Section 4.64 also issued under 8 U.S.C. 1221;

* * * * *

§ 4.64 [Amended]

■ 2. Section 4.64 is amended by, in paragraph (b)(2)(i), removing the words ''no later than 15 minutes'' and replacing them with the words ''no later than 60 minutes''.

PART 122—AIR COMMERCE REGULATIONS

■ 3. The general authority citation for part 122 and the specific authority citations for sections 122.49a and 122.75a continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

Section 122.49a also issued under 8 U.S.C. 1221, 19 U.S.C. 1431, 49 U.S.C. 44909.

* * * * *

Section 122.75a also issued under 8 U.S.C. 1221, 19 U.S.C. 1431.

* * * * *

■ 4. Section 122.49a is amended by, in paragraph (a), adding in appropriate alphabetical order the definition of ''securing the aircraft'' and by revising paragraphs (b)(1) and (b)(2), such addition and revisions to read as follows:

§ 122.49a Electronic manifest requirement for passengers onboard commercial aircraft arriving in the United States.

(a) * * *

Securing the aircraft. ''Securing the aircraft'' means the moment the aircraft's doors are closed and secured for flight.

* * * * *

(b) *Electronic arrival manifest.* (1) *General.* (i) *Basic requirement.* Except as provided in paragraph (c) of this section, an appropriate official of each commercial aircraft (carrier) arriving in the United States from any place outside the United States must transmit to the Advance Passenger Information System (APIS; referred to in this section as the Customs and Border Protection (CBP) system), the electronic data interchange system approved by CBP for such transmissions, an electronic passenger arrival manifest covering all passengers checked in for the flight. A passenger manifest must be transmitted separately from a crew member manifest required under § 122.49b if transmission is in U.S. EDIFACT format. The passenger manifest must be transmitted to the CBP system at the place and time specified in paragraph (b)(2) of this section, in the manner set forth under paragraph (b)(1)(ii) of this section.

(ii) *Transmission of manifests.* A carrier required to make passenger arrival manifest transmissions to the CBP system under paragraph (b)(1)(i) of this section must make the required transmissions, covering all passengers checked in for the flight, in accordance with either paragraph (b)(1)(ii)(A), (B), (C), or (D) of this section, as follows:

(A) *Non-interactive batch transmission option.* A carrier that

chooses not to transmit required passenger manifests by means of a CBP-certified interactive electronic transmission system under paragraph (b)(1)(ii)(B), (C), or (D) of this section must make batch manifest transmissions in accordance with this paragraph (b)(1)(ii)(A) by means of a non-interactive electronic transmission system approved by CBP. The carrier may make a single, complete batch manifest transmission containing the data required under paragraph (b)(3) of this section for all passengers checked in for the flight or two or more partial batch manifest transmissions, each containing the required data for the identified passengers and which together cover all passengers checked in for the flight. After receipt of the manifest information, the CBP system will perform an initial security vetting of the data and send to the carrier by a non-interactive transmission method a ''not-cleared'' instruction for passengers identified as requiring additional security analysis and a ''selectee'' instruction for passengers requiring secondary screening (e.g., additional examination of the person and/or his baggage) under applicable Transportation Security Administration (TSA) requirements. The carrier must designate as a ''selectee'' any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a ''not-cleared'' instruction and must contact TSA to seek resolution of the ''not-cleared'' instruction by providing, if necessary, additional relevant information relative to the ''not-cleared'' passenger. TSA will notify the carrier if the ''not-cleared'' passenger is cleared for boarding or downgraded to ''selectee'' status based on the additional security analysis.

(B) *Interactive batch transmission option.* A carrier, upon obtaining CBP certification, in accordance with paragraph (b)(1)(ii)(E) of this section, may make manifest transmissions by means of an interactive electronic transmission system configured for batch transmission of data and receipt from the CBP system of appropriate messages. A carrier operating under this paragraph must make transmissions by transmitting a single, complete batch manifest containing the data required under paragraph (b)(3) of this section for all passengers checked in for the flight or two or more partial batch manifests, each containing the required data for the identified passengers and which together cover all passengers checked in for the flight. In the case of connecting passengers arriving at the connecting airport already in possession of boarding passes for a U.S.-bound flight whose data have not been collected by the carrier, the carrier must transmit all required manifest data for these passengers when they arrive at the gate, or some other suitable place designated by the carrier, for the flight. After receipt of the manifest information, the CBP system will perform an initial security vetting of the data and send to the carrier by interactive electronic transmission, as appropriate, a ''cleared'' instruction for passengers not matching against the watch list, a ''not-cleared'' instruction for passengers identified as requiring additional security analysis, and a ''selectee'' instruction for passengers who require secondary screening (e.g., additional examination of the person and/or his baggage) under applicable TSA requirements. The carrier must designate as a ''selectee'' any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a ''not-cleared'' instruction and, in the case of connecting passengers (as described in this paragraph), the carrier must not board or load the baggage of any such passenger until the CBP system returns a ''cleared'' or ''selectee'' response for that passenger. Where a ''selectee'' instruction is received for a connecting passenger, the carrier must ensure that such passenger undergoes secondary screening before boarding. The carrier must seek resolution of a ''not-cleared'' instruction by contacting TSA and providing, if necessary, additional relevant information relative to the ''not-cleared'' passenger. Upon completion of the additional security analysis, TSA will notify the carrier if a ''not-cleared'' passenger is cleared for boarding or downgraded to ''selectee'' status based on the additional security analysis. No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting any passengers who checked in but were not onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (e.g., name) and may contain the unique identifiers or data for all passengers onboard the flight or for only those passengers who checked in but were not onboard the flight.

(C) *Interactive individual passenger information transmission option.* A carrier, upon obtaining CBP certification, in accordance with paragraph (b)(1)(ii)(E) of this section, may make manifest transmissions by means of an interactive electronic transmission system configured for transmitting individual passenger data for each passenger and for receiving from the CBP system appropriate messages. A carrier operating under this paragraph must make such transmissions as individual passengers check in for the flight or, in the case of connecting passengers arriving at the connecting airport already in possession of boarding passes for a U.S.-bound flight whose data have not been collected by the carrier, as these connecting passengers arrive at the gate, or some other suitable place designated by the carrier, for the flight. With each transmission of manifest information by the carrier, the CBP system will perform an initial security vetting of the data and send to the carrier by interactive electronic transmission, as appropriate, a ''cleared'' instruction for passengers not matching against the watch list, a ''not-cleared'' instruction for passengers identified as requiring additional security analysis, and a ''selectee'' instruction for passengers requiring secondary screening (e.g., additional examination of the person and/or his baggage) under applicable TSA requirements. The carrier must designate as a ''selectee'' any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a ''not-cleared'' instruction and, in the case of connecting passengers (as described in this paragraph), must not board or load the baggage of any such passenger until the CBP system returns a ''cleared'' or ''selectee'' response for that passenger. Where a ''selectee'' instruction is received by the carrier for a connecting passenger, the carrier must ensure that secondary screening of the passenger is conducted before boarding. The carrier must seek resolution of a ''not-cleared'' instruction by contacting TSA and providing, if necessary, additional relevant information relative to the ''not-cleared'' passenger. Upon completion of the additional security analysis, TSA will notify the carrier if a ''not-cleared'' passenger is cleared for boarding or downgraded to ''selectee'' status based on the additional security analysis. No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting any passengers who checked in but were not onboard the

flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (name) and may contain the unique identifiers or data for all passengers onboard the flight or for only those passengers who checked in but were not onboard the flight.

(D) *Combined use of interactive methods.* If certified to do so, a carrier may make transmissions under both paragraphs (b)(1)(ii)(B) and (C) of this section for a particular flight or for different flights.

(E) *Certification.* Before making any required manifest transmissions under paragraph (b)(1)(ii)(B) or (C) of this section, a carrier must subject its electronic transmission system to CBP testing, and CBP must certify that the carrier's system is then presently capable of interactively communicating with the CBP system for effective transmission of manifest data and receipt of appropriate messages in accordance with those paragraphs.

(2) *Place and time for submission.* The appropriate official specified in paragraph (b)(1)(i) of this section (carrier) must transmit the arrival manifest or manifest data as required under paragraphs (b)(1)(i) and (ii) of this section to the CBP system (CBP Data Center, CBP Headquarters), in accordance with the following:

(i) For manifests transmitted under paragraph (b)(1)(ii)(A) or (B) of this section, no later than 30 minutes prior to the securing of the aircraft;

(ii) For manifest information transmitted under paragraph (b)(1)(ii)(C) of this section, no later than the securing of the aircraft;

(iii) For flights not originally destined to the United States but diverted to a U.S. port due to an emergency, no later than 30 minutes prior to arrival; in cases of non-compliance, CBP will take into consideration whether the carrier was equipped to make the transmission and the circumstances of the emergency situation; and

(iv) For an aircraft operating as an air ambulance in service of a medical emergency, no later than 30 minutes prior to arrival; in cases of non-compliance, CBP will take into consideration whether the carrier was equipped to make the transmission and the circumstances of the emergency situation.

* * * * *

■ 5. Section 122.75a is amended by revising paragraphs (b)(1) and (b)(2), to read as follows:

§ 122.75a Electronic manifest requirements for passengers onboard commercial aircraft departing from the United States.

* * * * *

(b) *Electronic departure manifest.* (1) *General.* (i) *Basic requirement.* Except as provided in paragraph (c) of this section, an appropriate official of each commercial aircraft (carrier) departing from the United States en route to any port or place outside the United States must transmit to the Advance Passenger Information System (APIS; referred to in this section as the Customs and Border Protection (CBP) system), the electronic data interchange system approved by CBP for such transmissions, an electronic passenger departure manifest covering all passengers checked in for the flight. A passenger manifest must be transmitted separately from a crew member manifest required under § 122.75b if transmission is in U.S. EDIFACT format. The passenger manifest must be transmitted to the CBP system at the place and time specified in paragraph (b)(2) of this section, in the manner set forth under paragraph (b)(1)(ii) of this section.

(ii) *Transmission of manifests.* A carrier required to make passenger departure manifest transmissions to the CBP system under paragraph (b)(1)(i) of this section must make the required transmissions covering all passengers checked in for the flight in accordance with either paragraph (b)(1)(ii)(A), (B), (C), or (D) of this section, as follows:

(A) *Non-interactive batch transmission option.* A carrier that chooses not to transmit required passenger manifests by means of a CBP-certified interactive electronic transmission system under paragraph (b)(1)(ii)(B), (C), or (D) of this section must make batch manifest transmissions in accordance with this paragraph (b)(1)(ii)(A) by means of a non-interactive electronic transmission system approved by CBP. The carrier may make a single, complete batch manifest transmission containing the data required under paragraph (b)(3) of this section for all passengers checked in for the flight or two or more partial batch manifest transmissions, each containing the required data for the identified passengers and which together cover all passengers checked in for the flight. After receipt of the manifest information, the CBP system will perform an initial security vetting of the data and send to the carrier by a non-interactive transmission method a ''not-cleared'' instruction for passengers identified as requiring additional security analysis and a ''selectee'' instruction for passengers requiring secondary screening (e.g., additional examination of the person and/or his baggage) under applicable Transportation Security Administration (TSA) requirements. The carrier must designate as a ''selectee'' any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to the ''not-cleared'' instruction and must contact the Transportation Security Administration (TSA) to seek resolution of the ''not-cleared'' instruction by providing, if necessary, additional relevant information relative to the ''not-cleared'' passenger. TSA will notify the carrier if a ''not-cleared'' passenger is cleared for boarding or downgraded to ''selectee'' status based on the additional security analysis.

(B) *Interactive batch transmission option.* A carrier, upon obtaining CBP certification, in accordance with paragraph (b)(1)(ii)(E) of this section, may make manifest transmissions by means of an interactive electronic transmission system configured for batch transmission of data and receipt from the CBP system of appropriate messages. A carrier operating under this paragraph must make manifest transmissions by transmitting a single, complete batch manifest containing the data required under paragraph (b)(3) of this section for all passengers checked in for the flight or two or more partial batch manifests, each containing the required data for the identified passengers and which together cover all passengers checked in for the flight. In the case of connecting passengers arriving at the connecting airport already in possession of boarding passes for a flight departing from the United States whose data have not been collected by the carrier, the carrier must transmit required manifest data for these passengers when they arrive at the gate, or some other suitable place designated by the carrier, for the flight. After receipt of the manifest information, the CBP system will perform an initial security vetting of the data and send to the carrier by interactive electronic transmission, as appropriate, a ''cleared'' instruction for passengers not matching against the watch list, a ''not-cleared'' instruction for passengers identified as requiring additional security analysis, and a ''selectee'' instruction for passengers who require secondary screening (e.g., additional examination of the person and/or his baggage) under applicable TSA requirements. The carrier must designate as a ''selectee'' any passenger

so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a ''not-cleared'' instruction and, in the case of connecting passengers (as described in this paragraph), the carrier must not board or load the baggage of any such passenger until the CBP system returns a ''cleared'' or ''selectee'' response for that passenger. Where a ''selectee'' instruction is received for a connecting passenger, the carrier must ensure that such passenger undergoes secondary screening before boarding. The carrier must seek resolution of a ''not-cleared'' instruction by contacting TSA and providing, if necessary, additional relevant information relative to the ''not-cleared'' passenger. Upon completion of the additional security analysis, TSA will notify the carrier if a ''not-cleared'' passenger is cleared for boarding or downgraded to ''selectee'' status based on the additional security analysis. No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting any passengers who checked in but were not onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (name) and may contain the unique identifiers or data for all passengers onboard the flight or for only those passengers who checked in but were not onboard the flight.

(C) *Interactive individual passenger information transmission option.* A carrier, upon obtaining CBP certification, in accordance with paragraph (b)(1)(ii)(E) of this section, may make manifest transmissions by means of an interactive electronic transmission system configured for transmitting individual passenger data for each passenger and for receiving from the CBP system appropriate messages. A carrier operating under this paragraph must make such transmissions as individual passengers check in for the flight or, in the case of connecting passengers arriving at the connecting airport already in possession of boarding passes for a flight departing from the United States whose data have not been collected by the carrier, as these connecting passengers arrive at the gate, or some other suitable place designated by the carrier for the flight. With each transmission of manifest information by the carrier, the CBP system will perform an initial security vetting of the data and send to the carrier by interactive electronic transmission, as appropriate, a ''cleared'' instruction for passengers not matching against the watch list, a ''not-cleared'' instruction for passengers identified during initial security vetting as requiring additional security analysis, and a ''selectee'' instruction for passengers requiring secondary screening (e.g., additional examination of the person and/or his baggage) under applicable TSA requirements. The carrier must designate as a ''selectee'' any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a ''not-cleared'' instruction and, in the case of connecting passengers (as described in this paragraph), must not board or load the baggage of any such passenger until the CBP system returns a ''cleared'' or ''selectee'' response for that passenger. Where a ''selectee'' instruction is received for a connecting passenger, the carrier must ensure that such passenger undergoes secondary screening before boarding. The carrier must seek resolution of a ''not-cleared'' instruction by contacting TSA and providing, if necessary, additional relevant information relative to the ''not-cleared'' passenger. Upon completion of the additional security analysis, TSA will notify the carrier if a ''not-cleared'' passenger is cleared for boarding or downgraded to ''selectee'' status based on the additional security analysis. No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting any passengers who checked in but were not onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (name) and may contain the unique identifiers or data for all passengers onboard the flight or for only those passengers who checked in but were not onboard the flight.

(D) *Combined use of interactive methods.* If certified to do so, a carrier may make transmissions under both paragraphs (b)(1)(ii)(B) and (C) of this section for a particular flight or for different flights.

(E) *Certification.* Before making any required manifest transmissions under paragraph (b)(1)(ii)(B) or (C) of this section, a carrier must subject its electronic transmission system to CBP testing, and CBP must certify that the carrier's system is then presently capable of interactively communicating with the CBP system for effective transmission of manifest data and receipt of appropriate messages under those paragraphs.

(2) *Place and time for submission.* The appropriate official specified in paragraph (b)(1)(i) of this section (carrier) must transmit the departure manifest or manifest data as required under paragraphs (b)(1)(i) and (ii) of this section to the CBP system (CBP Data Center, CBP Headquarters), in accordance with the following:

(i) For manifests transmitted under paragraph (b)(1)(ii)(A) and (B) of this section, no later than 30 minutes prior to the securing of the aircraft;

(ii) For manifest information transmitted under paragraph (b)(1)(ii)(C) of this section, no later than the securing of the aircraft; and

(iii) For an aircraft operating as an air ambulance in service of a medical emergency, no later than 30 minutes after departure.

* * * * *

W. Ralph Basham,

Commissioner, Customs and Border Protection.

Approved:

Michael Chertoff,

Secretary.

[FR Doc. E7–15985 Filed 8–22–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 5

[Docket Number 2007–0053]

Privacy Act of 1974: Implementation of Exemptions; Advanced Passenger Information System

AGENCY: Privacy Office, Office of the Secretary, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is proposing to amend its regulations to exempt portions of a system of records from certain provisions of the Privacy Act. Specifically, the Department proposes to exempt portions of the Advance Passenger Information System from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. This notice is a republication of the Treasury Department exemption regulation (title 31, Code of Federal Regulations, part 1) which previously covered the Advanced Passenger Information System as part of the Treasury Enforcement Communications System.

DATES: Written comments must be submitted on or before September 24, 2007.

ADDRESSES: You may submit comments, identified by Docket Number DHS–2007–0053 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence E. Castelli (202–572–8790), Chief, Privacy Act Policy and Procedures Branch, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, Mint Annex, 1300 Pennsylvania Ave., NW., Washington, DC 20229. For privacy issues please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS), elsewhere in this edition of the **Federal Register**, published a Privacy Act system of records notice describing records in the Advance Passenger Information System (APIS). APIS performs screening of both inbound and outbound passengers and crew and crew members overflying the United States. As part of this screening function and to facilitate DHS's border enforcement mission, APIS data is compared with information in other CBP law enforcement systems, as well as with information from the TSDB, information on individuals with outstanding wants or warrants, and information from other government agencies regarding high risk parties and queries based on law enforcement data, intelligence, and past case experience to assess persons seeking to cross (or in the case of crew, overfly) the U.S. border using a means of transport covered by CBP's APIS regulations.

APIS contains records pertaining to various categories of individuals, including: Passengers and crew who arrive, transit through or depart the United States by air or sea (and includes the U.S. domestic portions of international travel for passengers and crew flying into or out of the United States) and crew members on aircraft that overfly the United States.

No exemption shall be asserted with respect to information maintained in the system that is collected from a person and submitted by that person's air or vessel carrier, if that person, or his or her agent, seeks access or amendment of such information.

This system, however, may contain records or information recompiled from or created from information contained in other systems of records, which are exempt from certain provisions of the Privacy Act. For these records or information only, in accordance with 5 U.S.C. 552a (j)(2), and (k)(2), DHS will also claim the original exemptions for these records or information from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f), and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information. Moreover, DHS will add these exemptions to Appendix C to 6 CFR Part 5, DHS Systems of Records Exempt from the Privacy Act. Such exempt records or information may be law enforcement or national security investigation records, law enforcement activity and encounter records, or terrorist screening records.

DHS needs these exemptions in order to protect information relating to law enforcement investigations from disclosure to subjects of investigations and others who could interfere with investigatory and law enforcement activities. Specifically, the exemptions are required to: Preclude subjects of investigations from frustrating the investigative process; avoid disclosure of investigative techniques; protect the identities and physical safety of confidential informants and of law enforcement personnel; ensure DHS's and other federal agencies' ability to obtain information from third parties and other sources; protect the privacy of third parties; and safeguard sensitive information. The exemptions proposed here are standard law enforcement exemptions exercised by a large number of federal law enforcement agencies.

Nonetheless, DHS will examine each request on a case-by-case basis, and, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained.

Again, DHS will not assert any exemption with respect to information maintained in the system that is collected from a person and submitted by that person's air or vessel carrier, if that person, or his or her agent, seeks access or amendment of such information.

Regulatory Requirements

A. Regulatory Impact Analyses

Changes to Federal regulations must undergo several analyses. In conducting these analyses, DHS has determined:

1. Executive Order 12866 Assessment

This rule is not a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review'' (as amended). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, DHS has reviewed this rulemaking, and concluded that there will not be any significant economic impact.

2. Regulatory Flexibility Act Assessment

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DHS certifies that this rule will not have a significant impact on a substantial number of small entities. The rule would impose no duties or obligations on small entities. Further, the exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the RFA.

3. International Trade Impact Assessment

This rulemaking will not constitute a barrier to international trade. The exemptions relate to criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This rulemaking will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DHS has determined that there are no current or new information collection requirements associated with this rule.

C. Executive Order 13132, Federalism

This action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

D. Environmental Analysis

DHS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

E. Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 6 CFR Part 5

Privacy, Freedom of information.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552.

2. Amend Appendix C to Part 5 by adding a new section 5 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

5. DHS/CBP–005, Advance Passenger Information System. A portion of the following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f), and (g); however, these exemptions apply only to the extent that information in this system of records is recompiled or is created from information contained in other systems of records subject to such exemptions pursuant to 5 U.S.C. 552a(j)(2), and (k)(2). Further, no exemption shall be asserted with respect to biographical or travel information submitted by, and collected from, a person or submitted through that person's air or vessel carrier. After conferring with the appropriate component or agency, DHS may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained. *Exemptions from the above particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, when information in this system of records is recompiled or is created from information contained in other systems of records subject to exemptions for the following reasons:*

(a) From subsection (c)(3) (Accounting for Disclosure) because making available to a record subject the accounting of disclosures from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a violation of U.S. law, including investigations of a known or suspected terrorist, by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(b) From subsection (c)(4) (Accounting for Disclosure, notice of dispute) because portions of this system are exempt from the access and amendment provisions of subsection (d), this requirement to inform any person or other agency about any correction or notation of dispute that the agency made with regard to the record, should not apply.

(c) From subsections (d)(1), (2), (3), and (4) (Access to Records) because these provisions concern individual access to and amendment of certain records contained in this system, including law enforcement, counterterrorism, and investigatory records. Compliance with these provisions could alert the subject of an investigation to the fact and nature of the investigation, and/or the investigative interest of intelligence or law enforcement agencies; compromise sensitive information related to law enforcement, including matters bearing on national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could identify a confidential source or disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of these records would interfere with ongoing counterterrorism or law enforcement investigations and analysis activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(d) From subsection (e)(1) (Relevancy and Necessity of Information) because it is not always possible for DHS or other agencies to know in advance what information is relevant and necessary for it to complete screening of passengers and crew. Information relating to known or suspected terrorists is not always collected in a manner that permits immediate verification or determination of relevancy to a DHS purpose. For example, during the early stages of an investigation, it may not be possible to determine the immediate relevancy of information that is collected—only upon later evaluation or association with further information, obtained subsequently, may it be possible to establish particular relevance to a law enforcement program. Lastly, this exemption is required because DHS and other agencies may not always know what information about an encounter with a known or suspected terrorist will be relevant to law enforcement for the purpose of conducting an operational response.

(e) From subsection (e)(2) (Collection of Information from Individuals) because application of this provision could present a serious impediment to counterterrorism or law enforcement efforts in that it would put the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counterterrorism, and law enforcement investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely solely upon information furnished by the individual concerning his own activities.

(f) From subsection (e)(3) (Notice to Subjects), to the extent that this subsection is

interpreted to require DHS to provide notice to an individual if DHS or another agency receives or collects information about that individual during an investigation or from a third party. Should the subsection be so interpreted, exemption from this provision is necessary to avoid impeding counterterrorism or law enforcement efforts by putting the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

(g) From subsections (e)(4)(G), (H) and (I) (Agency Requirements) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(h) From subsection (e)(5) (Collection of Information) because many of the records in this system coming from other systems of records are derived from other domestic and foreign agency record systems and therefore it is not possible for DHS to vouch for their compliance with this provision, however, the DHS has implemented internal quality assurance procedures to ensure that data used in its screening processes is as complete, accurate, and current as possible. In addition, in the collection of information for law enforcement and counterterrorism purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts.

(i) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism or law enforcement investigations to the fact of those investigations when not previously known.

(j) From subsection (f) (Agency Rules) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(k) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: August 8, 2007.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. E7–15966 Filed 8–22–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[DHS–2007–0041]

Privacy Act of 1974; Customs and Border Protection Advanced Passenger Information System Systems of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) gives notice that it is establishing a new system of records for collecting certain biographical information on all passenger and crew members who arrive in or depart from, or transit through (and crew that over fly) the United States on a covered air or vessel carrier, and, in the case of crew members, those who continue domestically on a foreign air or vessel carrier. The system of records is the Advance Passenger Information System.

Previously, this information was maintained within the Treasury Enforcement Communications System and was covered by a system of records notice published for the Treasury Enforcement Communications System. CBP is publishing a new system of records notice in order to permit the traveling public greater access to individual information and a more complete understanding of how and where information pertaining to them is collected and maintained.

DATES: The new system of records will be effective September 24, 2007.

ADDRESSES: You may submit comments, identified by Docket Number DHS–2007–0041 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence E. Castelli (202–572–8790), Chief, Privacy Act Policy and Procedures Branch, U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Mint Annex, 1300 Pennsylvania Ave., NW., Washington, DC 20229. For privacy issues contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Advance Passenger Information System (APIS) was originally developed as a voluntary program by the former U.S. Customs Service (Customs Service) in 1988 in cooperation with the former U.S. Immigration and Naturalization Service (INS) and the airline industry. Previously, this information was maintained within the Treasury Enforcement Communications System (TECS) and was covered by a system of records notice published for TECS. The most recent TECS SORN was published at 66 FR 52984 (Oct 18, 2001). In the original APIS regulation, commercial air and vessel carriers collected passengers' biographical data and transmitted the data to the Customs Service while the flight or the vessel was en route to the United States. The Customs Service Data Center used APIS data to perform a check against CBP's law enforcement databases, as well as information from the Federal Bureau of Investigations Terrorist Screening Center's Terrorist Screening Database (TSDB), information on individuals with outstanding wants or warrants, and information from other government agencies regarding high risk parties. Through the legacy voluntary APIS data program, checks were performed in advance of the arrival of the aircraft or vessel. The results were referenced by Customs agents or inspectors once the passengers arrived. This resulted in a significant time savings for the clearance of passengers and carriers.

The Aviation and Transportation Security Act of 2001 and the Enhanced Border Security and Visa Entry Reform Act of 2002 provided specific authority for the mandatory collection of certain information on all passenger and crewmembers that arrive in or depart from the United States on a commercial air or vessel carrier. The information is required to be collected and submitted to CBP as APIS data.

The information that is required to be collected and submitted to the APIS can be found on routine arrival/departure documents that passengers and crewmembers must provide to CBP, when entering or departing the United States. APIS includes complete name, date of birth, gender, country of citizenship, passport/alien registration number and country of issuance, passport expiration date, country of residence, status on board the aircraft, travel document type, United States destination address (except for U.S. Citizens, lawful permanent residents, crew and those in transit), place of birth and address of permanent residence (flight crew only), pilot certificate number and country of issuance (flight crew only, if applicable) and the Passenger Name Record (PNR) locator number. The PNR locator number allows CBP to access PNR consistent with its regulatory authority under 19 CFR 122.49d.

Additionally, air and vessel carriers must provide the airline carrier code, flight number, vessel name, vessel country of registry/flag, International Maritime Organization number or other official number of the vessel, voyage number, date of arrival/departure, foreign airport/port where the passengers and crew members began their air/sea transportation to the United States; for passengers and crew members destined for the United States, the location where the passengers and crew members will undergo customs and immigration clearance by CBP; and for passengers and crew members that are transiting through (and crew on flights over flying) the United States and not clearing CBP, the foreign airport/port of ultimate destination, and status on board (whether an individual is crew or non-crew); and for passengers and crew departing the United States, the final foreign airport/port of arrival.

CBP will collect the passengers' and crewmembers' information that is supplied by the air or vessel carriers in advance of a passenger's and crewmember's arrival in or departure from (and, for crew on flights over flying) the United States and maintains this information in the Advance Passenger Information System. The information will be used to perform counterterrorism, law enforcement, and public security queries to identify risks to the aircraft or vessel, to its occupants, or to the United States and to expedite CBP processing.

Under the Final Rule revision to APIS (70 FR 17820 (Apr. 7, 2005)), CBP mandates that air and vessel carriers collect personally identifiable information about passengers and crewmembers (including ''non-crew'' as defined in the 2005 APIS Final Rule) traveling by air or sea, and arriving in,

or departing from (and, in the case of crew, flights overflying), the United States from the respective carriers—this information is often collected and maintained on what is referred to as the manifest. The information that is required to be collected and submitted to APIS can be found on routine travel documents that passengers and crewmembers must provide when processed into or out of the United States (and most of the information is included on the Machine Readable Zone (MRZ) of most passports).

The purpose of the information collection is to screen passengers and crew members arriving from foreign travel points and departing the United States to identify those persons who may pose a risk to border, aviation or public security, may be a terrorist or suspected terrorist or affiliated with or suspected of being affiliated with terrorists, may be inadmissible, may be a person of interest, or may otherwise be engaged in activity in violation of U.S. law, or the subject of wants or warrants. The system allows CBP to facilitate effectively and efficiently the entry and departure of legitimate travelers into and from the United States. Using APIS, DHS officers can quickly reference the results of the advanced research that has been conducted through CBP's law enforcement databases, including information from the TSDB and information on individuals with outstanding wants or warrants, confirm the accuracy of that information by comparison with information obtained from the traveler (passenger and crew) and from the carriers, and make immediate determinations as to a traveler's security risk, admissibility and other determinations bearing on CBP's inspectional and screening processes.

Information collected in APIS is maintained for a period of no more than twelve months from the date of collection at which time the data is erased from APIS. Following CBP processing, a copy of certain information is transferred to the Border Crossing Information System, a subsystem of TECS. During physical processing at the border, primary inspection lane and ID inspector are added to APIS and the APIS information is verified. This information derived from APIS includes: complete name, date of birth, gender, date of arrival, date of departure, time arrived, means of arrival (air/sea), travel document, departure location, airline code, flight number, and the result of the CBP processing. Additionally, for individuals subject to US-VISIT requirements, a copy of certain APIS data is transferred to the Arrival and Departure Information System (ADIS) for effective and efficient tracking of foreign nationals, including to help identify lawfully admitted non-immigrants who remain in the United States beyond the period of authorized stay. US-VISIT currently applies to all visitors (with limited exemptions). The SORN for ADIS was last published on December 12, 2003 (68 FR 69412). The information transferred from APIS to ADIS includes: Complete name, date of birth, gender, citizenship, country of residence, status on board the vessel, U.S. destination address, passport number, expiration date of passport, country of issuance (for non-immigrants authorized to work), alien registration number, port of entry, entry date, port of departure, and departure date.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. APIS involves the collection of information that will be maintained in a system of records.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist the individual to more easily find such files within the agency. Below is the description of system of records referred to as the Advanced Passenger Information System.

In accordance with 5 U.S.C. 552a(r), a report concerning this record system has been sent to the Office of Management and Budget and to the Congress.

DHS/CBP–005

SYSTEM NAME:

Advanced Passenger Information System (APIS)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This computer database is located at U.S. Customs and Border Protection (CBP) National Data Center in Washington, DC. Computer terminals are located at customhouses, border ports of entry, airport inspection facilities under the jurisdiction of the Department of Homeland Security (DHS) and other locations at which DHS authorized personnel may be posted to facilitate DHS's mission. Terminals may also be located at appropriate facilities for other participating government agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this notice consist of:

A. Passengers who arrive and depart the United States by air or sea, including those in transit through the United States or beginning or concluding a portion of their international travel by flying domestically within the United States,

B. Crew members who arrive and depart the United States by air or sea, including those in transit through the United States or beginning or concluding a portion of their international travel by flying domestically within the United States, and

C. Crew members on aircraft that overfly the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the database are comprised of the following information: complete name, date of birth, gender, country of citizenship, passport/alien registration number and country of issuance, passport expiration date, country of residence, status on board the aircraft, travel document type, United States destination address (except for U.S. Citizens, lawful permanent residents, crew and those in transit), place of birth and address of permanent residence (flight crew only), pilot certificate number and country of issuance (flight crew only, if applicable), the PNR locator number, primary inspection lane, ID inspector, and records containing the results of comparisons of individuals to information maintained in CBP's law enforcement databases, as well as information from the TSDB, information on individuals with outstanding wants or warrants, and information from other government agencies regarding high risk parties.

In addition, carriers or operators covered by the APIS rules must transmit

to CBP the following information: airline carrier code, flight number, vessel name, vessel country of registry/flag, International Maritime Organization number or other official number of the vessel, voyage number, date of arrival/departure, foreign airport/port where the passengers and crew members began their air/sea transportation to the United States; for passengers and crew members destined for the United States, the location where the passengers and crew members will undergo customs and immigration clearance by CBP; and for passengers and crew members that are transiting through (and crew on flights over flying) the United States and not clearing CBP, the foreign airport/port of ultimate destination; and for passengers and crew departing the United States, the final foreign airport/port of arrival.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Aviation and Transportation Security Act of 2001, the Enhanced Border Security and Visa Reform Act of 2002, and the Intelligence Reform and Terrorism Prevention Act of 2004, also the Tariff Act of 1930, as amended, including 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, and 1644a.

PURPOSE(S):

The purpose of the collection is to screen passengers and crew arriving in, transiting through and departing from (and in the case of crew, overflying) the United States to identify those passengers and crew who may pose a risk to border, aviation or public security, may be a terrorist or suspected terrorist or affiliated with or suspected of being affiliated with terrorists, may be inadmissible, may be a person of interest, or may otherwise be engaged in activity in violation of U.S. law, or the subject of wants or warrants.

APIS allows CBP to facilitate more effectively and efficiently the entry of legitimate travelers into the United States and the departure of legitimate travelers from the United States. As travelers prepare to depart for or from the United States, DHS officers, using APIS, can quickly cross-reference the results of the advanced research that has been conducted through CBP's law enforcement databases, as well as using information from the TSDB, information on individuals with outstanding wants or warrants, and information from other government agencies regarding high risk parties, confirm the accuracy of that information by comparison of it with information obtained from the traveler and from the carriers, and make immediate determinations with regard to the traveler's security risk, admissibility and other determinations bearing on CBP's inspectional and screening processes.

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, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To appropriate Federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where DHS believes the information would assist enforcement of civil or criminal laws;

B. To Federal and foreign government intelligence or counterterrorism agencies or components where CBP becomes aware of an indication of a threat or potential threat to national or international security, or where such use is to assist in anti-terrorism efforts and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

C. To an organization or individual in either the public or private sector, either foreign or domestic, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life, property or other vital interests of a data subject and disclosure is proper and consistent with the official duties of the person making the disclosure;

D. To appropriate Federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations, for the purpose of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or for combating other significant public health threats; appropriate notice will be provided of any identified health threat or risk;

E. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, or in connection with criminal law proceedings;

F. To third parties during the course of an law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate in the proper performance of the official duties of the officer making the disclosure;

G. To an agency, organization, or individual for the purposes of performing audit or oversight operations as authorized by law but only such information as is necessary and relevant to such audit or oversight function;

H. To a Congressional office, for the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains;

I. To an appropriate Federal, state, local, tribal, territorial, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request;

J. To contractors, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records, in compliance with the Privacy Act of 1974, as amended;

K. To the U. S. Department of Justice (including U.S. Attorney offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation: (1) DHS, or (2) any employee of DHS in his/her official capacity, or (3) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent said employee, or (4) the United States or any agency thereof;

L. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. Sections 2904 and 2906;

M. To appropriate Federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations where CBP is aware of a need to utilize relevant data for purposes of testing new technology and systems designed to enhance border security or identify other violations of law;

N. To appropriate agencies, entities, and persons when (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) CBP has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by CBP or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons when reasonably necessary to assist in connection with the CBP's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

O. To the carrier, who submitted traveler, passenger, or crew information to CBP, but only to the extent that CBP provides a message indicating that the individual is ''cleared'' or ''not cleared'' to board the aircraft or depart on the vessel in response to the initial transmission of information, or is identified as a ''selectee''.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The data is stored electronically at the CBP Data Center for current data and offsite at an alternative data storage facility for historical logs and system backups.

RETRIEVABILITY:

The data is retrievable by name or other unique personal identifier from an electronic database.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules, and policies. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include role-based access provisions, restricting access to authorized personnel who have a need-to-know, using locks, and password protection identification features. DHS file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

The system manager, in addition, has the capability to maintain system back-ups for the purpose of supporting continuity of operations and the discrete need to isolate and copy specific data access transactions for the purpose of conducting security incident investigations.

All communication links with the CBP datacenter are encrypted. The Databases are fully Certified and Accredited in accordance with the requirements of the Federal Information Security Management Act (FISMA).

Although separate notice is being provided for APIS, it continues to operate within the TECS information technology system architecture; therefore APIS's technical infrastructure is covered by the approved TECS Certification and Accreditation under the National Institute of Standards and Technology. The last certification was in January 2006.

RETENTION AND DISPOSAL:

Information collected in APIS is maintained in this system for a period of no more than twelve months from the date of collection at which time the data is erased from APIS. As part of the vetting and CBP clearance (immigration and customs screening and inspection) of a traveler, information from APIS is copied to the Border Crossing Information System, a subsystem of TECS. Additionally, for individuals subject to US–VISIT requirements, a copy of certain APIS data is transferred to the Arrival and Departure Information System (ADIS) for effective and efficient processing of foreign nationals. The SORN for ADIS was last published on December 12, 2003 (68 FR 69412). Different retention periods apply for APIS data contained in those systems.

SYSTEM MANAGER(S) AND ADDRESS

Director, Office of Automated Systems, U.S. Customs and Border Protection Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

NOTIFICATION PROCEDURES:

DHS allows persons (including foreign nationals) to seek administrative access under the Privacy Act to information maintained in APIS. Persons may only seek access to APIS data that has been provided by the carrier and of which they are the subject. To determine whether APIS contains records relating to you, write to the FOIA/Privacy Act Branch, Office of Field Operations, U.S. Customs and Border Protection, Room 5.5–C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 (phone: (202) 344–1850 and fax: (202) 344–2791).

RECORD ACCESS PROCEDURES:

Requests for notification or access must be in writing and should be addressed to the FOIA/Privacy Act Branch, Office of Field Operations, U.S. Customs and Border Protection, Room 5.5–C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Requests should conform to the requirements of 6 CFR part 5, subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS and can be found at *http://www.dhs.gov/foia.* The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury.

If individuals are uncertain what agency handles the information, they may seek redress through the DHS Traveler Redress Program (''TRIP'') (See 72 Fed. Reg. 2294, dated January 18, 2007). Individuals who believe they have been improperly denied entry, refused boarding for transportation, or identified for additional screening by CBP may submit a redress request through the TRIP. TRIP is a single point of contact for individuals who have inquiries or seek resolution regarding difficulties they experienced during their travel screening at transportation hubs—like airports, seaports and train stations or at U.S. land borders. Through TRIP, a traveler can request correction of erroneous stored in other DHS databases through one application. Redress requests should be sent to: DHS Traveler Redress Inquiry Program (TRIP), 601 South 12th Street, TSA–901, Arlington, VA 22202–4220 or online at *http://www.dhs.gov/trip.*

CONTESTING RECORD PROCEDURES:

Individuals may seek redress and/or contest a record through several different means that will be handled in the same fashion. If the individual is aware the information is specifically handled by CBP, requests may be sent directly to CBP at the FOIA/Privacy Act Branch, Office of Field Operations, U.S. Customs and Border Protection, Room 5.5–C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 (phone: (202) 344–1850 and fax: (202) 344–2791). If the individual is uncertain what agency is responsible for maintaining the information, redress requests may be

sent to DHS TRIP at DHS Traveler Redress Inquiry Program (TRIP), 601 South 12th Street, TSA–901, Arlington, VA 22202–4220 or online at *http://www.dhs.gov/trip.*

RECORD SOURCE CATEGORIES:

The system contains data received from aircraft operators/carriers and vessel carriers regarding passengers and crewmembers who arrive in, depart from, transit through or overfly (in the case of flight crew only) the United States on an air or vessel carrier covered by APIS regulations. During physical processing at the border, primary inspection lane and ID inspector are added to APIS, and the APIS information is verified using the travel documents. Additionally, records contain the results of comparisons of individuals to information maintained in CBP law enforcement databases, as well as information from the TSDB, information on individuals with outstanding wants or warrants, and information from other government agencies regarding high risk parties.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemption shall be asserted with respect to information maintained in the system that is collected from a person and submitted by that person's air or vessel carrier, if that person, or his or her agent, seeks access or amendment of such information.

This system, however, may contain records or information recompiled from or created from information contained in other systems of records, which are exempt from certain provisions of the Privacy Act. For these records or information only, in accordance with 5 U.S.C. 552a (j)(2), and (k)(2), DHS will also claim the original exemptions for these records or information from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f), and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information.

Dated: August 8, 2007.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. E7–15976 Filed 8–22–07; 8:45 am]

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Federal Register

Thursday,
August 23, 2007

Part III

Department of Homeland Security

Transportation Security Administration

49 CFR Parts 1507, 1540, 1544, and 1560
Secure Flight Plan; Proposed Rule
Privacy Act of 1974: System of Records; Secure Flight Plans; Notice
Privacy Act of 1974: Implementation of Exemptions; Secure Flight Records; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1540, 1544, and 1560

[Docket No. TSA–2007–28572]

RIN 1652–AA45

Secure Flight Program

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Intelligence Reform and Terrorism Prevention Act (IRTPA) requires the Department of Homeland Security (DHS) to assume from aircraft operators the function of conducting pre-flight comparisons of airline passenger information to Federal Government watch lists for international and domestic flights. The Transportation Security Administration (TSA) is currently developing the Secure Flight program and issuing this rulemaking to implement this congressional mandate.

This rule proposes to allow TSA to begin implementation of the Secure Flight program, under which TSA would receive passenger and certain non-traveler information, conduct watch list matching against the No Fly and Selectee portions of the Federal Government's consolidated terrorist watch list, and transmit boarding pass printing instructions back to aircraft operators. TSA would do so in a consistent and accurate manner while minimizing false matches and protecting privacy information.

Also in this volume of the **Federal Register**, U.S. Customs and Border Protection (CBP) is publishing a final rule to implement pre-departure advance passenger and crew manifest requirements for international flights and voyages departing from or arriving into the United States, using CBP's Advance Passenger Information System (APIS). These rules are related. We propose that, when the Secure Flight rule becomes final, aircraft operators would submit passenger information to DHS through a single DHS portal for both the Secure Flight and APIS programs. This would allow DHS to integrate the watch list matching component of APIS into Secure Flight, resulting in one DHS system responsible for watch list matching for all aviation passengers.

DATES: Submit comments by October 22, 2007.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, using any one of the following methods:

Comments Filed Electronically: You may submit comments through the docket Web site at *http://dms.dot.gov.* You also may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov.*

Comments Submitted by Mail, Fax, or In Person: Address or deliver your written, signed comments to the Docket Management System at: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590; Fax: 202–493–2251.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Kevin Knott, Policy Manager, Secure Flight, Office of Transportation Threat Assessment and Credentialing, TSA–19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220, telephone (240) 568–5611.

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites comments relating to the appropriateness, effectiveness, and any economic, environmental, energy, or federalism impacts resulting from the required provisions of this rulemaking. Interested persons may do this by submitting written comments, data, or views. See **ADDRESSES** above for information on where to submit comments.

With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. The most helpful comments reference a specific portion of the rulemaking, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date your comments were received on the postcard and mail it to you.

TSA will file in the public docket all comments received by TSA, except for comments containing confidential information and sensitive security information (SSI).[1] TSA will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section.

Upon receipt of such comments, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold them in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS) FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

You may review the comments in the public docket by visiting the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

in the West Building Ground Floor, Room W12–140, at the Department of Transportation address, previously provided under **ADDRESSES**. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Abbreviations and Terms Used in This Document

APIS—Advance Passenger Information System
ATSA—Aviation and Transportation Security Act
AOIP—Aircraft Operator Implementation Plan
CBP—U.S. Customs and Border Protection
DHS—Department of Homeland Security
2005 DHS Appropriations Act—Department of Homeland Security Appropriations Act, 2005
2007 DHS Appropriations Act—Department of Homeland Security Appropriations Act, 2007
DHS TRIP—Department of Homeland Security Traveler Redress Inquiry Program
FBI—Federal Bureau of Investigation
FOIA—Freedom of Information Act
GAO—Government Accountability Office
HSPD—Homeland Security Presidential Directive
IATA—International Air Transport Association
IRTPA—Intelligence Reform and Terrorism Prevention Act of 2004
PNR—Passenger Name Record
PRI—Passenger Resolution Information
PIA—Privacy Impact Assessment
SFPD—Secure Flight Passenger Data
SSI—Sensitive Security Information
SORN—System of Records Notice
TSA—Transportation Security Administration
TSC—Terrorist Screening Center
TSDB—Terrorist Screening Database

Outline of Notice of Proposed Rulemaking

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The Proposed Amendments

I. Background

TSA performs passenger and baggage screening at the Nation's commercial airports.[2] Aircraft operators currently supplement this security screening by performing passenger watch list matching using the Federal No Fly and Selectee Lists, as required under security directives that TSA issued following the terrorist attacks of September 11, 2001. Aircraft operators also conduct this watch list matching process for non-traveling individuals authorized to enter the sterile area[3] of an airport in order to escort a passenger or for some other purpose approved by TSA.

The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) requires TSA to assume from air carriers the comparison of passenger information to the automatic Selectee and No Fly Lists and to utilize all appropriate records in the consolidated and integrated watch list that the federal government maintains.[4] The final report of the National Commission on Terrorist Attacks Upon the United States (9/11 Commission Report) recommends that the watch list matching function ''should be performed by TSA and it should utilize the larger set of watch lists maintained by the Federal Government.'' See 9/11 Commission Report at 393.

Consequently, pursuant to § 4012(a) of the IRTPA, TSA is issuing this NPRM to propose implementation of the Secure Flight program. Under the program, TSA would receive passenger and certain non-traveler information from aircraft operators, conduct watch list matching, and transmit watch list matching results back to aircraft operators.

The purpose of the Secure Flight program is to assume the watch list matching function from aircraft operators and to more effectively and consistently prevent certain known or suspected terrorists from boarding aircraft where they may jeopardize the lives of passengers and others. The program is designed to better focus enhanced passenger screening efforts on individuals likely to pose a threat to civil aviation, and to facilitate the secure and efficient travel of the vast majority of the traveling public by distinguishing them from individuals on the watch list.

In general, the Secure Flight program would compare passenger information only to the No Fly and Selectee List components of the Terrorist Screening Database (TSDB), which contains the Federal Government's consolidated terrorist watch list, maintained by the Terrorist Screening Center (TSC).[5] However, as recommended by the 9/11

[2] See the Aviation and Transportation Security Act (ATSA) (Pub. L. 107–71, 115 Stat. 597, Nov. 19, 2001).

[3] ''Non-traveling individual'' would be defined in this Notice of Proposed Rulemaking as an individual to whom a covered aircraft operator or covered airport operator seeks to issue an authorization to enter the sterile area of an airport in order to escort a minor or a passenger with disabilities or for some other purpose permitted by TSA. It would not include employees or agents of airport or aircraft operators or other individuals whose access to a sterile area is governed by another TSA regulation or security directive. Proposed 49 CFR 1560.3.

''Sterile area'' is defined as a portion of airport defined in the airport security program that provides passengers access to boarding aircraft and to which the access generally is controlled by TSA, or by an aircraft operator under part 1544 of this chapter or a foreign air carrier under part 1546 of this chapter, through the screening of persons and property. 49 CFR 1540.5.

[4] Pub. L. 108–458, 118 Stat. 3638, Dec. 17, 2004.

[5] The TSC was established by the Attorney General in coordination with the Secretary of State, the Secretary of Homeland Security, the Director of the Central Intelligence Agency, the Secretary of the Treasury, and the Secretary of Defense. The Attorney General, acting through the Director of the Federal Bureau of Investigation (FBI), established the TSC in support of Homeland Security Presidential Directive 6 (HSPD–6), dated September 16, 2003, which required the Attorney General to establish an organization to consolidate the Federal Government's approach to terrorism screening and provide for the appropriate and lawful use of terrorist information in screening processes.

Commission, TSA may use ''the larger set of watch lists maintained by the Federal Government,'' when warranted by security considerations. For example, TSA may learn that flights on a particular route may be subject to increased security risk. If this happens, TSA may decide to compare passenger information on some or all of the flights on that route against the full TSDB or other government databases, such as intelligence or law enforcement databases.

This proposed rule would affect covered flights operated by U.S. aircraft operators that are required to have a full program under 49 CFR 1544.101(a), and covered flights operated by foreign air carriers that are required to have a security program under 49 CFR 1546.101(a) or (b). These aircraft operators generally are the passenger airlines that offer scheduled and public charter flights from commercial airports. This proposed rule refers to them as ''covered U.S. aircraft operators'' and ''covered foreign air carriers'' respectively, and ''covered aircraft operators'' collectively.

The proposed rule would cover all flights conducted by covered U.S. aircraft operators, as well as all flights conducted by a covered foreign air carrier arriving in or departing from the United States or overflying the continental United States (referred to as ''covered international flights''). TSA is proposing to conduct watch list matching for overflights in order to protect the United States from terrorist activity that could occur in its airspace. The proposed rule collectively refers to the flights conducted by U.S. carriers and covered international flights that would be regulated under this proposed rule as ''covered flights.''

IRTPA also requires DHS to assume from air carriers the task of comparing passenger information for international flights to or from the United States against the Federal Government's consolidated and integrated terrorist watch list before departure of such flights. Initially, CBP will implement this requirement and conduct pre-departure watch list matching for international flights, through its Advance Passenger Information System (APIS). APIS is a widely-utilized electronic data interchange system that international commercial air and vessel carriers use to electronically transmit to CBP certain data on passengers and crew members. The former U.S. Customs Service, in cooperation with the former Immigration and Naturalization Service (INS) and the airline industry, developed APIS in 1988. On July 14, 2006, CBP published a notice of proposed rulemaking to require air and vessel carriers to submit to CBP passenger manifest information before departure of an international flight to or from the United States and for voyages from the United States to enable CBP to conduct watch list matching on passengers before they board an international flight or depart on certain voyages.[6]

In response to a substantial number of comments from the aviation industry, DHS is proposing a unified approach to watch list matching for international and domestic passenger flights, to avoid unnecessary duplication of watch list matching efforts and resources and reduce the burden on aircraft operators. CBP's APIS Pre-Departure Final Rule published elsewhere in this issue of the **Federal Register** and this notice of proposed rulemaking (NPRM) are being published jointly to explain DHS's proposed unified approach. Beginning on the effective date of the APIS Pre-Departure final rule, CBP will perform the watch list matching function for international flights to or from the United States as part of its overall screening of travelers. However, DHS proposes to ultimately transfer the watch list matching function to the Secure Flight program. If this approach is adopted, TSA would assume the aviation passenger watch list matching function for domestic and international passengers covered by this proposed rule, and CBP would continue to conduct border enforcement functions under the APIS program. DHS is establishing one portal through which aircraft operators will send their passenger information for both programs, with the goal of streamlining the transmission of passenger information, if the unified approach is adopted.

A. Current Watch List Matching

1. Watch List Matching for Domestic Flights

Under security directives issued by TSA, covered U.S. aircraft operators currently conduct pre-flight watch list matching for passengers on domestic flights using the Federal No Fly and Selectee Lists. Aircraft operators also apply this process to non-traveling individuals authorized to enter the sterile area beyond the screening checkpoint in order to escort a minor or a passenger with disabilities, or for another purpose authorized by TSA.

Under the current watch list matching process, when an aircraft operator has a reservation from a passenger with a name that is the same as, or similar to, a name on the No Fly List, TSA requires the aircraft operator to notify law enforcement personnel and TSA in order to determine whether that passenger is in fact the individual whose name is on the No Fly List. If the passenger is verified as an individual on the No Fly List, the aircraft operator is prohibited from transporting the passenger. When an aircraft operator has a reservation from a passenger with a name that is the same as, or similar to, a name on the Selectee List, TSA requires the aircraft operator to identify the individual to TSA for enhanced screening at security screening checkpoints.[7]

2. Watch List Matching for International Flights

Covered aircraft operators also currently conduct watch list matching for passengers on international flights in the same manner described above for domestic flights as required in TSA security directives and emergency amendments to a security program. Additionally, CBP conducts various activities, including watch list matching, to screen passengers on commercial international flights arriving in and departing from the United States through the Advance Passenger Information System (APIS). CBP conducts such activities in order to protect the United States from threats of terrorism and to carry out CBP's border enforcement mission.

Under CBP's APIS regulations (19 CFR part 122), air carriers departing foreign ports destined for the United States are required to electronically submit passenger information to CBP no later than fifteen minutes after the departure of aircraft destined for the United States and 15 minutes prior to departure of aircraft from the United States. ''Departure'' currently is defined to be the moment the aircraft's wheels leave the tarmac. *See* 19 CFR 122.49. The current system allows CBP to supplement the watch list matching currently completed by air carriers prior to boarding. If CBP's screening identifies that a person on a no-fly list is on an aircraft bound for, or departing from, the United States, that aircraft will be diverted from its intended destination.

In this volume of the **Federal Register**, CBP is publishing a final rule entitled ''Advance Electronic Submission of Passenger and Crew Member Manifests for Commercial

[6] 71 FR 40035.

[7] Individuals may undergo enhanced screening at security screening checkpoints for a variety of other reasons, such as random selection or as a result of triggering a metal detector alarm.

Aircraft and Vessels'' (APIS Pre-Departure Final Rule). This rule, which becomes effective 180 days after publication, will require air carriers to provide the passenger information it currently provides to CBP, but requires air carriers to provide it no later than the time the flight crew secure the aircraft doors for takeoff.

When commercial air carriers are certified to transmit APIS data under the pre-departure APIS requirements of the new APIS Pre-Departure Final Rule, CBP will assume from those carriers the responsibility of conducting pre-departure watch list matching for international flights to or from the United States. Once CBP receives the information, it will complete the watch list matching process and return instructions concerning each passenger to the covered aircraft operators. Covered aircraft operators will be required to follow the instructions when issuing boarding passes to passengers, identifying passengers for enhanced screening, and allowing passengers to board the aircraft or preventing them from doing so. If the Secure Flight program is finalized as envisioned in this proposed rule, it will take over this watch list matching function for aircraft operators covered under this proposed rule from CBP.

B. Secure Flight Program Summary

1. Secure Flight Passenger Data

Under the Secure Flight program proposed under this rule, TSA would require covered aircraft operators to collect information from passengers, transmit passenger information to TSA for watch list matching purposes, and process passengers in accordance with TSA instructions regarding watch list matching results. Under this proposed rule, TSA would collect Secure Flight Passenger Data (SFPD), consisting of the information summarized below (and discussed in greater detail in section I.E.2 ''information collection requirements'' *infra*).

For passengers on covered flights, TSA is proposing to require covered aircraft operators to request a passenger's full name, gender, date of birth, and Redress Number [8] (if available) or known traveler number [9] (if available once the known traveler program is implemented). Even though covered aircraft operators would be required to request all of the above data elements from passengers, passengers would only be required to provide their full name at the time of reservation to allow TSA to perform watch list matching. They would not be required by TSA to provide the other data elements to aircraft operators at the time of reservation. Covered aircraft operators would be required to transmit to TSA the information provided by the passenger in response to the request described above.

Covered aircraft operators also would be required to transmit to TSA passport information, if available. Although not required to be requested by TSA under this proposed rule, passport information may be provided by passengers either voluntarily or under other travel requirements such as CBP APIS requirements if a passenger is traveling abroad. Additionally, covered aircraft operators would be required to transmit to TSA certain non-personally identifiable information such as itinerary information, record locator numbers etc. to allow TSA to effectively prioritize watch list matching efforts, communicate with the covered aircraft operator, and facilitate an operational response, if necessary, to an individual who is on the watch list.

When a non-traveling individual seeks authorization from a covered aircraft operator to enter an airport sterile area (such as to escort a minor or assist a passenger with a disability), TSA also is proposing to require covered aircraft operators to request from the non-traveler and transmit to TSA, the same information requested from passengers (to the extent available), as well as certain non-personally identifiable information, including the airport code for the sterile area to which the non-traveler seeks access.

The following chart details the information that TSA would require covered aircraft operators to request from passengers and certain non-traveling individuals, the information that those individuals would be required to provide, and the information covered aircraft operators would be required to transmit to TSA if available:

PROPOSED INFORMATION COLLECTION REQUIREMENTS FOR SECURE FLIGHT

Data elements	Covered aircraft operators must request from passengers and certain non-travelers	Passengers and certain non-travelers must provide	Covered aircraft operators must transmit to TSA, if available
Full Name	X	X	X
Date of Birth	X		X
Gender	X		X
Redress Number or Known Traveler Number	X		X
Passport Information [10]			X
Itinerary Information [11]			X
Reservation Control Number			X
Record Sequence Number			X
Record Type			X
Passenger Update Indicator			X
Traveler Reference Number			X

This proposed rule would not compel the passenger or non-traveler to provide the majority of the information that covered aircraft operators request. However, if that individual elected not to provide the requested information,

[8] A Redress Number is a unique number that DHS currently assigns to individuals who use the DHS Traveler Redress Inquiry Program (TRIP). Under the proposed rule, individuals would use the Redress Number in future correspondence with DHS and when making future travel reservations. The Redress Number is further discussed in the Secure Flight Information Collection Requirements section below.

[9] A known traveler number would be a unique number assigned to ''known travelers'' for whom the Federal Government has already conducted a threat assessment and has determined do not pose a security threat. The known traveler number is further discussed in the Secure Flight Information Collection Requirements section.

TSA may have insufficient information to distinguish him or her from a person on the watch list. Accordingly, the individual may be more likely to experience delays, be subject to additional screening, be denied transport, or be denied authorization to enter a sterile area. Without a full name, watch list matching is incredibly unreliable; therefore the proposed rule would require an individual seeking to travel on a covered flight or authorization to enter a sterile area to provide his or her full name, as it appears on the individual's verifying identity document. The proposed rule would also prohibit covered aircraft operators from accepting a reservation, or accepting a request for authorization to enter a sterile area, from an individual who does not provide a full name.

2. 72-Hour Requirement

Under the Secure Flight proposed rule, covered aircraft operators would be required to transmit Secure Flight Passenger Data to TSA approximately 72 hours prior to the scheduled flight departure time.[12] Requiring SFPD approximately 72 hours prior to scheduled flight departure time would support the security mission of the Secure Flight program and facilitate a streamlined watch list matching process for aircraft operators and passengers in at least the following ways.

TSA considered a number of factors in determining that aircraft operators should submit SFPD to TSA approximately 72 hours before scheduled flight departure time. TSA reviewed reservation trend analyses which indicates that, on average, an estimated 90–93% of travel reservations are finalized and become stable (e.g. not subject to cancellation or timing changes) 72 hours before the scheduled flight departure time. Accordingly, TSA determined that it would not be practicable to require aircraft operators to submit information earlier than 72 hours prior to flight departure time, as such information would still be subject to change and would not provide sufficiently reliable information for TSA to begin watch list matching or engage in any necessary coordination with law enforcement.

During a standard travel day, TSA estimates that over 2.4 million passengers use covered aircraft operators for domestic and international travel (either destined for or departing from the United States). Although approximately 99% of passenger travel reservations would be finalized within 24 hours of the departure of any flight, 24 hours would not provide TSA with sufficient time to adequately screen 2.4 million passengers and, when necessary, coordinate operational responses in the event of identification of a terrorist suspect or as needed to identify and disrupt a suspected terrorist plot potentially involving a variety of flights or aircraft operators, foreign or domestic.

It is important to note that, in any one day, TSA would be conducting watch list matching on not only the 2.4 million travelers for one designated travel day, but TSA also would continue to conduct watch list matching for the 2.4 million travelers for each of the two days before the date of departure of the flight. In total, over a 72-hour period, TSA could be conducting watch list matching for up to 7.2 million travelers traveling within a 72-hour period.

Accordingly, TSA is proposing that covered aircraft operators submit SFPD approximately 72 hours in advance.

Security benefits. A 72-hour period would provide the significant security benefit of allowing the U.S. government to coordinate an operational response to a match on a watch list—not only before the flight departs, but even in advance of the individual's arrival at the airport. Also, TSA could provide a single watch list matching solution for both domestic and international flights, because TSA would have the time to prioritize the domestic and international watch list matching workload and accommodate last-minute reservations and changes.

Benefits to covered aircraft operators and passengers. The 72-hour period would also allow TSA to complete watch list matching in time to allow covered aircraft operators to begin issuing boarding passes to passengers 24 hours prior to departure. Watch list matching that takes place immediately prior to the flight's departure, such as that allowed by CBP's APIS rule, would not allow TSA to communicate with covered aircraft operators regarding the issuance of boarding passes 24 hours prior to departure. Additionally, passengers' travel experiences would be enhanced because TSA would use that time to adjudicate potential watch list matches and coordinate with other government agencies as necessary, to resolve as many false positives as possible before such individuals arrive at the airport or experience delay or inconvenience.

TSA welcomes public comment on this timeframe, as well as on alternate timeframes, and will consider these comments in the development of the final rule. As always, comments that include an analytical justification are most useful.

3. Instructions to Covered Aircraft Operators

TSA would match the SFPD provided by covered aircraft operators against the watch list. Based on the watch list matching results, TSA would instruct an aircraft operator to process the individual in the normal manner, to identify the individual for enhanced screening at a security checkpoint, or to deny the individual transport or authorization to enter the airport sterile area. To ensure the integrity of the boarding pass instructions and to prevent use of fraudulent boarding passes, TSA would also provide instructions on placing codes on the boarding passes. Covered aircraft operators would be required to comply with the TSA instructions.

4. Summary of Requirements

A brief summary of the requirements proposed in this NPRM is presented below. A detailed explanation of these requirements is provided in the Section-by-Section Analysis.

- *Requirements of Covered Aircraft Operators.* This proposed rule would require aircraft operators that conduct certain scheduled and public charter flights to:
- Submit an Aircraft Operator Implementation Plan (AOIP) to TSA for approval.
- Conduct operational testing with TSA.
- Request full name, date of birth, gender, and Redress Number (if available) or known traveler number (if implemented and available) from passengers and non-traveling individuals.
- Transmit Secure Flight Passenger Data for passengers and non-traveling individuals, in accordance with the aircraft operator's AOIP, approximately 72 hours prior to the scheduled flight departure time.
- Make a privacy notice available on public Web sites and self-service kiosks before collecting any personally identifiable information from passengers or non-traveling individuals.

[10] Passport information is the following information from a passenger's passport: (1) Passport number; (2) country of issuance; (3) expiration date; (4) gender; (5) full name.

[11] Itinerary information is the following information about a covered flight: (1) Departure airport code; (2) aircraft operator; (3) departure date; (4) departure time; (5) arrival date; (6) scheduled arrival time; (7) arrival airport code; (8) flight number; (9) operating carrier (if available). For non-traveling individuals, the itinerary information is the airport code for the sterile area to which the non-traveling individual seeks access.

[12] In the APIS Pre-Departure Final Rule, CBP also encourages, but does not mandate, all carriers to submit the information up to 72 hours in advance when available, to facilitate clearance.

• Request a verifying identity document at the airport ticket counter if TSA has not informed the covered aircraft operator of the results of watch list matching for an individual by the time the individual attempts to check-in, or informs the covered aircraft operator that an individual must be placed on inhibited status and may not be issued a boarding pass or authorization to enter a sterile area. A verifying identity document is one that has been issued by a Federal, State, local, or tribal government that contains the individual's full name, photo, and date of birth, and is non-expired; though a non-expired passport issued by a foreign government will also be considered a verifying identity document. This requirement would be in addition to the current requirement that aircraft operators request all passengers and non-traveling individuals to provide identification at the time of check-in or at a screening checkpoint.

• When necessary, submit information from the verifying identity document to TSA to resolve potential watch list matches. In some cases, TSA may also request that the covered aircraft operator communicate a physical description of the individual.

• Not issue to an individual a boarding pass or authorization to enter a sterile area or permit an individual to board an aircraft or enter a sterile area if the individual does not provide a verifying identity document when requested under circumstances described above, unless otherwise authorized by TSA.

• Prohibit issuance of boarding passes or authorizations to enter a sterile area to individuals whom TSA has placed on inhibited status. Prohibit these individuals from boarding an aircraft.

• Comply with instructions from TSA to designate identified individuals for enhanced screening before boarding a flight or accessing a sterile area.

• Place separate codes on boarding passes in accordance with TSA instructions.

• *Requirements of Individuals.* Individuals who wish to make a reservation on a covered flight or to access a sterile area must provide their full names to the covered aircraft operators. This proposed rule would require those passengers and non-traveling individuals for whom TSA has not provided watch list matching results or has provided inhibited status to present a verifying identity document, in order to board an aircraft or to enter a sterile area. Individuals also would continue to be subject to the current requirement that aircraft operators request all passengers and non-traveling individuals to provide identification at the time of check-in or at a screening checkpoint.

• *Government Redress Procedures Available to Individuals.* This proposed rule explains the redress procedures for individuals who believe they have been improperly or unfairly delayed or prohibited from boarding a flight as a result of the Secure Flight program. These individuals may seek assistance through the redress process by submitting certain personal information, as well as copies of certain identification documents, to the existing DHS Traveler Redress Inquiry Program (DHS TRIP). The proposed rule explains the process the Federal Government will use to review the information submitted and to provide a timely written response.

C. Implementation Stages of Secure Flight

TSA proposes to implement this rule in two stages. The first stage would include covered flights between two domestic points in the United States, and the second stage would include covered flights to or from the United States, flights that overfly the continental United States, and all other flights (such as international point-to-point flights) operated by covered U.S. aircraft operators not covered in the first stage.

1. Implementation of Secure Flight for Domestic Flights

During the first stage of implementation, TSA would assume the watch list matching function for domestic flights conducted by covered U.S. aircraft operators. TSA would conduct operational testing with each covered U.S. aircraft operator to ensure that the aircraft operator's system is compatible with TSA's system. After successful operational testing with a covered U.S. aircraft operator, TSA would assume the watch list matching function for domestic flights from that aircraft operator.

2. Implementation of Secure Flight for International Flights

Until TSA implements the Secure Flight program for international flights by covered aircraft operators, DHS plans for CBP to conduct pre-departure watch list matching for international flights under the APIS Pre-Departure Final Rule. This interim approach will allow DHS to more quickly address the threat of terrorism on flights arriving in and departing from the United States.

During the second stage of Secure Flight implementation, TSA will assume the watch list matching function for covered international flights from CBP. There are a few differences between the two processes. First, covered aircraft operators would need to request passenger information at the time of reservation, as required under this proposed rule. Second, as described below, TSA would utilize Secure Flight Passenger Data, which requires collection of different data elements than under the APIS regulations. For its non-watch list matching functions, which CBP will continue to perform under the APIS rule, CBP would continue to collect APIS data. Given this, and to provide a single point of contact, covered aircraft operators can transmit both APIS data and Secure Flight Passenger Data in a single transmission to the DHS portal, which will route information to TSA and CBP as appropriate.

The following tables list the data elements that CBP will collect under its APIS regulations, and that TSA will collect under the Secure Flight program.

Data elements	APIS regulations (international flights) [13]	Secure flight NPRM [14]
Full Name	X	X
Date of Birth	X	X
Gender	X	X
Redress Number or Known Traveler Number		X
Passport Number*	X	X
Passport Country of Issuance*	X	X
Passport Expiration Date*	X	X
Passenger Name Record Locator	X	
International Air Transport Association (IATA) Foreign Airport Code—place of origination	X	X

Data elements	APIS regulations (international flights) [13]	Secure flight NPRM [14]
IATA Code—Port of First Arrival	X	X
IATA Code of Final Foreign Port for In-transit Passengers	X	
Airline Carrier Code	X	X
Flight Number	X	X
Date of Aircraft Departure	X	X
Time of Aircraft Departure	X	X
Date of Aircraft Arrival	X	X
Scheduled Time of Aircraft Arrival	X	X
Citizenship	X	
Country of Residence	X	
Status on Board Aircraft	X	
Travel Document Type	X	
Alien Registration Number**	X	
Address While in U.S.—(except for outbound flights, U.S. citizens, lawful permanent residents, crew and intransit passengers)	X	
Reservation Control Number		X
Record Sequence Number		X
Record Type		X
Passenger update indicator		X
Traveler Reference Number		X

*If required.
**If applicable.

TSA would require covered aircraft operators to transmit to TSA the available passenger information required under this proposed rule that resides in covered aircraft operators' systems. Covered aircraft operators must submit this information, through the same DHS portal used for APIS submissions, approximately 72 hours before departure of a covered flight. Those that elect to transmit all manifest information required under the Pre-Departure APIS rule at the same time would be able to send a single transmission to DHS for the Secure Flight and Pre-Departure APIS programs and would receive a single boarding pass printing instruction in return. Under the APIS regulations, such aircraft operators would then be required to validate the information submitted against the individual's passport or other travel document and transmit passenger information to DHS only if it is different from the information previously submitted, no later than 30 minutes prior to or up to the securing of the doors of an aircraft under CBP's APIS Pre-Departure rule.

Covered aircraft operators that do not elect to transmit all manifest information required under the Pre-Departure APIS rule approximately 72 hours in advance would submit validated APIS information no later than 30 minutes prior to or up to the securing of the doors of an aircraft under CBP's Pre-Departure APIS rule. The aircraft operator would only receive a boarding pass printing instruction from DHS after the APIS transmission if the transmitted APIS data differs from the SFPD that was transmitted 72 hours prior to departure.

Additionally, for reservations made within 72 hours of scheduled flight departure time, covered aircraft operators would be required to transmit Secure Flight Passenger Data as soon as possible. If the covered aircraft operator is also ready to transmit APIS information at that time, the covered aircraft operator would be able to send one transmission for both Secure Flight and Pre-Departure APIS and would receive one boarding pass printing instruction. If the covered aircraft operator is not ready to transmit passenger under Pre-Departure APIS at the same time, the covered aircraft operator would be required to transmit the passenger information separately for Secure Flight and APIS.

Covered aircraft operators would use the same portal to transmit Secure Flight Passenger Data to TSA as they will to transmit APIS data to CBP. Covered U.S. aircraft operators would not need to undergo additional operational testing during the second phase, because they would have already conducted operational testing with TSA during the first phase. TSA, however, would need to conduct operational testing with the covered foreign air carriers, which would not have previously conducted operational testing with TSA, to confirm that the Secure Flight process operates properly from end-to-end with these carriers.

Once TSA assumes responsibility under Secure Flight for the watch list matching function for the majority of passengers covered by the APIS regulation, CBP would no longer be responsible for pre-departure watch list matching or the issuance of related boarding pass printing instructions for covered flights. Consequently, covered aircraft operators would receive, and would have to comply with, one set of instructions from DHS, via TSA, regarding the issuance of boarding passes to or the boarding of passengers on covered international flights. CBP would, however, continue to require carriers to provide APIS data to carry out its border enforcement mission. CBP would continue to require covered aircraft operators and passengers to comply with CBP's APIS regulations, including passengers presenting their passports or other required travel documents at the airport to the aircraft operators in order for the aircraft operator to verify the APIS information and to transmit it to CBP if the APIS information was not previously transmitted or if the verified APIS information is different from the information previously transmitted.

In some international airports, passengers may transit from one international flight to another, where the flights are operated by different aircraft operators and only the second flight would be a covered flight under this proposed rule. TSA understands that currently, in these situations, the aircraft operator operating the first flight

[13] All APIS data elements are required.

[14] Covered aircraft operators must provide data elements listed for Secure Flight, to the extent they are available.

may issue a boarding pass for both legs of the passenger's itinerary, including the flight to the United States. Under this proposed rule, the aircraft operator operating the first flight would not be able to issue a boarding pass for the second flight until that aircraft operator received an appropriate boarding pass printing instruction from TSA. This would allow TSA to minimize the security risk of allowing passengers who have not yet been compared against the watch list to have access to aircraft and the secure area of an airport. TSA is seeking comment on this proposed requirement.

D. Privacy Documents

TSA is committed to safeguarding individuals' privacy in conducting the Secure Flight Program to the greatest extent possible. In conjunction with this NPRM, TSA is publishing a Privacy Impact Assessment (PIA) for the Secure Flight Program, a Privacy Act System of Records Notice (SORN), DHS/TSA 019, and an NPRM proposing Privacy Act exemptions for the Secure Flight Program. All three documents outline how TSA would collect, use, store, protect, and retain personally identifiable information collected and used as part of the Secure Flight Program and identify the privacy risks and mitigation measures that would be employed to reduce or eliminate privacy risks, such as false positive matches or insufficient safeguards for the information. All three documents are available at *http://www.tsa.gov* and the SORN and the NPRM proposing the Privacy Act exemptions will be published in the **Federal Register**. TSA invites public comments on the SORN and NPRM proposing Privacy Act exemptions. TSA will respond to public comments received on the PIA, SORN, and NPRM through the rulemaking process and revise the respective documents as appropriate.

TSA has developed a comprehensive approach to promoting compliance with the Fair Information Practices codified in the Privacy Act of 1974, the E-Government Act of 2002, DHS and TSA privacy policies, and Office of Management and Budget (OMB) privacy guidance. Comprehensive privacy requirements are being included in the program requirements to allow TSA to identify privacy issues and risks at each phase of the program and implement privacy principles across Secure Flight systems and operations. The Secure Flight program has designated an individual to work closely with the TSA Director of Privacy Policy and Compliance as well as the DHS Chief Privacy Officer to promote compliance with the published documents for the program, including the SORN and the PIA. This individual would also routinely monitor and review the operations that authorized users perform on personal information according to a schedule to be determined and will be responsible for the implementation of the privacy program.

The Secure Flight program seeks to balance the competing interests of data collection minimization and reduction of false positives through individual choice. TSA has limited the proposed information collection requirements for Secure Flight to the data elements TSA believes are minimally necessary for effective watch list matching of aviation passengers, as discussed in Section E.2. below. The proposed rule leaves individuals with the choice to decline to provide certain data elements. For the vast majority of individuals, a decision to forgo providing these data elements should have no effect on their watch list matching results and will result in less information being held by TSA. For some individuals, however, TSA may be unable to perform effective automated watch list matching without this information and, as a result, those individuals may be more likely to be subject to additional screening or be denied boarding or authorization to enter a sterile area.

The Secure Flight Program also would mitigate the privacy risk of false positive matches to the watch list by supplementing the initial automated comparison with a manual assessment conducted by a Secure Flight analyst, but only if necessary to complete the watch list matching process. Individuals will be provided with the opportunity under the DHS Traveler Redress Inquiry Program (TRIP) redress process and under the Privacy Act of 1974 to access and correct personal information, subject to the Privacy Act exemptions proposed for Secure Flight records and other applicable legal constraints. Secure Flight would not utilize commercial data to verify identities, nor would it use algorithms to assign risk scores to individuals.

TSA is proposing to retain records for most individuals encountered by Secure Flight for a short period of time.[15] The vast majority of records are expected to be destroyed within seven (7) days of completion of directional travel.[16] Records for individuals not identified as potential matches by the automated matching tool would be retained for seven days after the completion of the individual's directional travel for audit purposes. Records for individuals who are potential matches would be retained for seven years after the completion of the individual's directional travel. These records would be available if needed as part of the redress process and, as a result, may help to expedite future travel. Records concerning confirmed matches are expected to be retained for 99 years. This retention period is consistent with TSC's NARA-approved records retention schedule for TSDB records. In case of a terrorist event, records concerning the event, which may possibly include passenger information, would be retained in accordance with a separate TSA record retention schedule covering major security incident records. This information would be retained to support the investigation and documentation of a terrorist event. Such records would be maintained in accordance with applicable SORNs, DHS/TSA 001, Transportation Security Enforcement Records System, 69 FR 71818, 71829 (December 10, 2004) and DHS/TSA 011, Transportation Security Intelligence Service Operations Files, 69 FR 71828, 71835 (December 10, 2004).

The Secure Flight Program would further minimize potential privacy risks by integrating administrative, technical, and physical security safeguards to limit collection of personally identifiable information and to protect information against unauthorized disclosure, use, modification or destruction. Specifically, administrative safeguards will restrict the permissible uses of personal information and implement the controls for adherence to those uses. As part of technical safeguards employed, Secure Flight will employ role-based access controls and audit logging (that is, the chronicling of information accesses and uses of information) to control and monitor the use of personal information. Further, all personnel who will be authorized to handle personal information for the Secure Flight program will be required to complete TSA privacy training when they join the program and on at least an annual basis thereafter. Personal information will only be disclosed to, and used by, authorized individuals who have a need to know the information in order to perform their duties. These safeguards will further minimize the potential privacy risk that personal information may be improperly used. The PIA

[15] The retention schedule will be submitted for approval to the National Archives and Records Administration (NARA). TSA will retain the records in accordance with the retention schedule approved by NARA.

[16] Directional travel means the individual's one-way travel to his or her destination.

addresses all of these safeguards in more detail.

TSA will issue an amended PIA and a revised SORN in conjunction with the Secure Flight Final Rule if necessary. Although not required, covered aircraft operators may voluntarily choose to begin testing with TSA prior to TSA publishing a final rule. The PIA and the SORN would cover any testing between an aircraft operator and TSA including both domestic and international flights.

E. Secure Flight Testing and Information Collection Requirements

After initial Secure Flight testing described below, TSA has limited the proposed information collection requirements for Secure Flight to the data elements TSA believes are minimally necessary for aviation passenger watch list matching. In making this determination, TSA balanced the privacy interest in minimizing the collection of personal information with the security need to conduct effective watch list matching, without unnecessarily delaying innocent individuals due to false positive watch list matches.

1. Secure Flight Testing

Prior to initiating this rulemaking, TSA performed testing of the agency's ability to conduct automated watch list matching for purposes of the Secure Flight program and separately, testing to determine whether the use of commercial data would be effective in identifying passenger information that is incorrect or inaccurate. On September 24, 2004, TSA published in the **Federal Register** a number of documents necessary to allow the agency to begin testing the Secure Flight program. These documents included: (1) A proposed order to U.S. aircraft operators directing them to provide a limited set of historical passenger name records (PNRs) to TSA for use in testing the program (69 FR 57342); (2) a Privacy Act System of Records Notice for records involved in testing the program (69 FR 57345); and (3) a Privacy Impact Assessment (PIA) of program testing (69 FR 57352[0]).

On November 15, 2004, after reviewing the comments received in response to these documents, TSA published in the **Federal Register** the final order directing U.S. aircraft operators to provide to TSA, by November 23, 2004, a limited set of historical PNRs for testing of the Secure Flight program.[17] TSA also published revisions to the system of records notice and the Privacy Impact Assessment (PIA) on June 22, 2005,[18] to make clear that the purpose of commercial data testing was ''to test the Government's ability to verify the identities of passengers using commercial data and to improve the efficacy of watch list comparisons by making passenger information more complete and accurate using commercial data.''

After reviewing the results of the testing and the comments received concerning the testing, TSA determined that it will not use commercial data in the program. This decision is consistent with Section 514(f) of the Department of Homeland Security Appropriations Act, 2007 (2007 DHS Appropriations Act), Public Law 109–295 (Oct. 4, 2006), which currently prohibits TSA from using appropriated funds on data or a database that is obtained from, or remains under the control of, a non-Federal entity (other than passenger information from aircraft operators) for the Secure Flight program.

2. *Information Collection Requirements*

Based on the automated watch list matching test results and TSA's experience in conducting security threat assessments that include watch list matching, TSA has carefully selected the personal information that TSA believes is necessary to conduct effective watch list matching for aviation passengers. Consequently, under the proposed rule, TSA would collect Secure Flight Passenger Data consisting of the information described below.

Full Name, Gender, and Date of Birth: Based on the automated watch list matching test results and TSA's experience in conducting security threat assessments that include watch list matching, TSA believes that an individual's full name, gender, and date of birth are critically important for effective automated matching against the watch list. This proposed rule, therefore, would require covered aircraft operators to request full name, gender, and date of birth from all passengers and non-traveling individuals accessing sterile areas. As discussed in the Section-by-Section Analysis below, TSA defines ''full name'' in proposed § 1560.3 (Terms Used in This Part) and uses it as the primary attribute to conduct watch list matching. Partial names, which some aircraft operators currently collect, would increase the likelihood of false positive matches, because partial names are more likely to match a number of different entries on the watch list. As a result, this proposed rule would require individuals seeking a reservation on a covered flight or authorization to enter a sterile area to provide their full names and would prohibit covered aircraft operators from authorizing entry to a sterile area or accepting a reservation for a passenger on a covered flight who does not provide a full name.

Many names, including English and non-English names, do not indicate gender, because they can be used by either gender. Additionally, names not derived from the Latin alphabet, when transliterated into English, do not generally denote gender. Providing information on gender will reduce the number of false positive watch list matches, because the information will distinguish persons who have the same or similar names but who are of different gender. Date of birth is also helpful in distinguishing a passenger from an individual on a watch list with the same or similar name, thereby reducing the number of false positive watch list matches.

Under the proposed rule, TSA would not compel individuals to provide their gender and date of birth when aircraft operators request it. Without this information, however, TSA may be unable to rule out such individuals as a watch list match, and consequently they may be subject to additional screening or be denied boarding or authorization to enter a sterile area. Covered aircraft operators would then be required to transmit to TSA the names, gender, and dates of birth for passengers on covered flights, to the extent they are available as part of the reservation process. For example, if a passenger provides a full name but does not provide gender or a date of birth, the covered aircraft operator would be required to transmit to TSA the full name. If a covered aircraft operator were to input data required to be requested from individuals into the system where it stores SFPD—such as data from a passenger profile stored by the aircraft operator in the ordinary course of business—the aircraft operator would be required to include that data as part of the SFPD transmitted to TSA, even though the individual did not provide that information at the time of reservation.

Redress Number: This proposed rule would also require covered aircraft operators to request an individual's Redress Number, if available. DHS will assign this unique number to individuals who use the DHS Traveler Redress Inquiry Program (DHS TRIP), because they believe they have been incorrectly delayed, identified for enhanced screening, denied boarding, or denied access to a sterile area.

[17] 69 FR 65619.

[18] 70 FR 36320.

Individuals who have already undergone TSA's redress process would not need to use DHS TRIP to reapply for redress once the Secure Flight process is operational. Individuals may be less likely to be delayed by false positive matches to the watch list if they provide their Redress Number at the time of making a flight reservation or requesting access to a sterile area. TSA is proposing to require that each covered aircraft operator request this information to provide the opportunity for an individual to use his or her assigned Redress Number to facilitate travel or access to a sterile area.

Known Traveler Number:

In addition, the proposed rule provides that covered aircraft operators may be required to request a known traveler number from passengers and non-traveling individuals, if available. The known traveler number would be a unique number assigned to ''known travelers'' for whom the Federal Government has already conducted a terrorist security threat assessment and has determined do not pose a terrorist security threat. The known traveler number would enable TSA to identify these ''known travelers,'' further reducing the number of false positive matches to the watch list, and reduce unnecessary duplication of Federal Government watch list matching efforts. Although TSA would continue to conduct watch list matching for ''known travelers,'' by having the known traveler numbers of these individuals, TSA would be able to identify them as individuals who have already completed a Federal terrorist security threat assessment. The proposed rule would not compel individuals to provide a known traveler number upon request from the aircraft operator. Without a known traveler number, however, the individual may be more likely to experience delays, be subjected to enhanced screening, be denied boarding, or be denied access to a sterile area.

Because TSA has not yet determined which categories of individuals should be considered ''known travelers,'' we specifically seek comment on this provision. The proposed rule would not require covered aircraft operators to initially request the known traveler number along with the other passenger identification information. Instead, once TSA has determined the categories of individuals that should be considered as ''known travelers,'' TSA would provide covered aircraft operators written notification 30 days in advance that they must begin to collect and transmit the known traveler number. TSA is adding this known traveler number requirement in the proposed rule now to allow covered aircraft operators advance planning in making all necessary system changes. Once TSA informs covered aircraft operators that they must begin to collect and transmit the known traveler number, covered aircraft operators may transmit the known traveler number in the Redress Number field, as it would not be necessary for the covered operators to send both the Redress Number and the known traveler number to TSA.

Passport Information:

TSA proposes to require covered aircraft operators to transmit certain information from an individual's passport (passport number, country of issuance, expiration date, gender, and full name), if available. The proposed rule, however, does not propose to require covered aircraft operators to collect the passport information if they do not otherwise collect it in the normal course of business or unless otherwise required by other rules, such as APIS. Based on TSA's experience in conducting security threat assessments that include watch list matching, TSA believes that passport information would enable TSA analysts to resolve possible false positive matches and make the watch list matching process more accurate.

For passengers who have previously flown on an international flight as part of their travel itinerary, the covered aircraft operator may already have the passport information if the covered aircraft operator was required to collect passport information for the previous flight pursuant to requirements under regulations issued by CBP. For such passengers, TSA would require covered aircraft operators to transmit passport information to TSA as part of the initial SFPD transmission. For passengers whose itinerary includes a domestic flight that connects to an international flight, covered aircraft operators often collect passport information when the passenger checks in for the domestic flight. For these passengers, covered aircraft operators would be required under this proposed rule to transmit the passport information to TSA as soon as it is available. In cases where passport information is available, the proposed rule would require covered aircraft operators to transmit the passport information to TSA, in order to verify the information provided at the time of reservation, facilitate identification of individuals who are on the watch list, and further minimize false positive matches.

Information Used To Manage Messaging:

This rule also proposes to require covered aircraft operators to provide certain non-personally identifiable data fields, including passenger itinerary information (or airport code for non-travelers requesting sterile area access) for TSA to effectively prioritize watch list matching efforts, communicate with the covered aircraft operator, and facilitate an operational response, if necessary, to an individual who is on the watch list. For example, if TSA identifies an individual on the watch list, TSA or the TSC may need to engage law enforcement officials to question or detain the individual, as appropriate.

F. The Watch List Matching Process Under Secure Flight

The proposed rule would require all covered aircraft operators to request the information discussed above from passengers on a covered flight and non-traveling individuals. The proposed rule, however, would not require all covered aircraft operators to begin transmitting that information to TSA at the same time. TSA proposes to bring covered aircraft operators into Secure Flight in phases and require aircraft operators to begin providing passenger and non-traveler information to TSA in accordance with the deadlines set forth in their approved AOIP, discussed further below.

For passengers, TSA proposes to require covered aircraft operators to transmit the SFPD including itinerary information. For non-traveling individuals, TSA proposes that covered aircraft operators transmit the SFPD including the airport code for the airport sterile area that the non-traveling individual seeks to enter.

TSA proposes that information be transmitted to TSA approximately 72 hours in advance of departure, unless the individual makes a reservation within 72 hours of the scheduled flight departure time, changes a flight within 72 hours of the scheduled flight departure time, or requests to enter a sterile area upon arrival at the airport. In such cases, TSA would require covered aircraft operators to send the required information to TSA immediately. TSA, in coordination with the TSC where necessary, would compare the passenger and non-traveler information obtained from each covered aircraft operator to information contained in the watch list. TSA would also compare passenger and non-traveler information to a list of individuals who have previously been distinguished from persons on the watch list.

If an automated comparison using the information transmitted to TSA

indicates that the passenger is not a match to the watch list, TSA will notify the aircraft operator that check-in and boarding pass issuance for the individual can proceed normally. Such individuals will undergo standard passenger and baggage screening. If the automated comparison using the passenger or non-traveler information identifies a potential match to the Selectee List, TSA will notify the covered aircraft operator that the passenger or non-traveling individual and his or her baggage must be identified for enhanced screening. TSA is also considering adding a random element to Secure Flight, whereby individuals may be selected for enhanced screening even though they are not a match to the watch list. The addition of this random element would provide Secure Flight with another layer of security, because it would introduce unpredictability into the process.

TSA expects to complete the watch list matching process for, and permit covered aircraft operators to issue boarding passes to, the vast majority of passengers through this fully-automated initial comparison. If the automated comparison indicates a reasonably similar or exact match to a person on the No Fly component of the watch list, TSA will inform the covered aircraft operator that the individual must be placed on inhibited status and consequently, the aircraft operator may not issue a boarding pass or other authorization to enter the sterile area for that individual unless further resolution procedures indicate that the individual may be issued a boarding pass or authorization to enter a sterile area. If the SFPD for that individual contains sufficient data, a TSA analyst will then conduct a preliminary analysis of the individual identified as a potential match. The TSA analyst will review all available information to determine if the passenger appears to be the individual on the No Fly component of the watch list. If necessary, the TSA analyst will check other classified and unclassified governmental terrorist, law enforcement, and intelligence databases, including databases maintained by the Department of Homeland Security, Department of Defense, National Counter Terrorism Center, and Federal Bureau of Investigation (FBI), in order to resolve the possible match between the individual and a person on the No Fly component of the watch list.

This careful review process is intended to significantly reduce the number of false positive matches identified by the automated watch list check. If the TSA analyst determines that the individual is not a match to the No Fly component of the watch list, TSA will inform the covered aircraft operator that the individual no longer has inhibited status, and the aircraft operator may issue a boarding pass or authorization to enter a sterile area to that individual. If the TSA analyst identifies a possible match between a passenger and an individual identified on the No Fly component of the watch list, TSA will send the passenger information to TSC and request confirmation of the match.

TSA may be unable to complete the watch list matching process for an individual, if, for instance, the individual fails to provide his or her full name, gender, and date of birth when making the flight reservation, or if the individual's full name, gender, and date of birth and other information in the SFPD are insufficient to distinguish him or her from an individual who appears on the No Fly component of the watch list. The proposed rule provides that if TSA or TSC cannot determine from the information provided by the covered aircraft operator whether an individual is a match to the No Fly component of the watch list prior to the individual's arrival at the airport or online check-in, it will be necessary for the individual to provide additional information at the airport. These individuals may be asked to present to the covered aircraft operator a verifying identity document, which must be an unexpired form of identification that is issued by a Government (Federal, State, local, or tribal), and contains the individual's full name, photo, and date of birth or an unexpired passport issued by a foreign government. This requirement would not replace current requirements that covered aircraft operators request all passengers and non-traveling individuals to provide identification, such as at check-in or at the screening checkpoint.

Once the individual provides a verifying identity document to the covered aircraft operator, the proposed rule would require the aircraft operator to update the passenger's SFPD with the additional information from the individual's verifying identity document and transmit it to TSA. There may be occasions where the aircraft operator will need to call TSA. In such cases, the aircraft operator may be asked to provide additional identifying information, such as a physical description, referred to as ''Passenger Resolution Information,'' that TSA may need to complete the watch list matching process. TSA will complete the watch list matching process, in coordination with the TSC, and provide the aircraft operator with watch list matching results for that individual.

Where warranted, any Federal agency or other public, private, or appropriate foreign government entity may be notified to initiate an operational response.[19] The agency or entity will be provided with sufficient information about the passenger and his or her itinerary to facilitate coordination of the operational response. The Federal Security Director, Federal Air Marshals, or other law enforcement personnel responsible for airport security may also be notified to facilitate a timely law enforcement response to the individual identified in the watch list. Further inquiry by law enforcement may, for example, help resolve a situation of mistaken identity or confirm the determination made in the screening process that an individual should be denied boarding or entry to a sterile area.

G. Operational Testing of Secure Flight

As part of the implementation of the Secure Flight program, TSA would conduct operational testing of TSA's capabilities to interact with and perform watch list matching for each covered aircraft operator before assuming the watch list matching function from each aircraft operator. During the operational testing for each covered aircraft operator, the covered aircraft operator would establish data transmission connections to TSA through an established DHS portal, and TSA would test its ability to receive passenger and non-traveler information, conduct watch list matching and transmit watch list matching results back to the aircraft operator in real-time. Operational testing will allow TSA to refine program operations and ensure that TSA will be able to effectively conduct watch list matching for passengers and non-traveling individuals of each covered aircraft operator before TSA assumes the watch list matching function.

Covered U.S. aircraft operators would continue to match passengers against the watch lists for domestic flights under current procedures during their operational test phase and would maintain responsibility for denying issuance of boarding passes or identifying individuals for enhanced screening as a result of their own watch list matching determinations. If, during operational testing, TSA identifies a

[19] For the types of public and private entities that TSA may notify, see ''Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of Such Uses'' in the **Federal Register** notice entitled ''Privacy Act of 1974: System of Records; Secure Flight Records.'' [Add FR citation]

match to the No Fly and Selectee Lists that a covered aircraft operator has not identified, TSA may identify such passengers to the TSC and the covered aircraft operator for appropriate action, as permitted under section 514(d) of the 2007 DHS Appropriations Act. Once TSA assumes the watch list matching function from a covered aircraft operator, the aircraft operator would discontinue conducting watch list comparisons for passengers and non-traveling individuals.

For international flights, covered U.S. aircraft operators would be required to follow CBP boarding pass printing instructions in accordance with the APIS Pre-Departure Final Rule until TSA informs the covered U.S. aircraft operator that it will assume the watch list matching function. Foreign air carriers would also be required to follow CBP boarding pass printing instructions in accordance with the APIS Pre-Departure Final Rule during operational testing and until TSA informs the covered foreign air carrier that TSA will assume the watch list matching function.

The proposed rule also states that TSA would provide prior written notification to each covered aircraft operator of the date on which it would assume the watch list matching function from that covered aircraft operator. Because operational testing would begin with covered aircraft operators in phases, TSA would likely transition to implementation in phases as well and may continue operational testing with some covered aircraft operators while beginning implementation with others.

H. Proposed Compliance Schedule

TSA believes that most of the new provisions concerning covered aircraft operators' collection and transmission of SFPD in this proposed rule are achievable within 60 days after the effective date of the final rule. However, TSA intends to implement some provisions on a rolling basis. TSA requests comment on the proposed compliance schedule below:

(1) The final rule would become effective 60 days after the date of publication in the **Federal Register**.

(2) In accordance with proposed § 1560.109, TSA would require covered aircraft operators to submit their AOIP no later than 30 days after the effective date.

(3) In accordance with proposed §§ 1560.101(a) and 1560.103, TSA would require covered aircraft operators to begin requesting the information from passengers and non-traveling individuals and begin providing the privacy notice no later than 60 days after the effective date. TSA would not require covered aircraft operators to request information from passengers who made reservations on covered flights prior to that date.

(4) In accordance with proposed § 1560.101(a), TSA would require covered aircraft operators to begin requesting known traveler numbers from passengers and non-traveling individuals 30 days after receiving written notice from TSA.

(5) TSA anticipates that it would require covered aircraft operators to have the capability to transmit SFPD for covered flights to TSA no later than 60 days after the effective date.

(6) TSA proposes that covered aircraft operators be required to begin transmitting SFPD to TSA in accordance with a schedule approved by TSA, as provided in each covered aircraft operator's AOIP. TSA expects the first phase of implementation to cover domestic flights operated by covered U.S. aircraft operators. A second phase of implementation would extend to international flights operated by covered U.S. aircraft operators as well as flights arriving in or departing from the United States and flights overflying the continental United States operated by covered foreign air carriers.

(7) Once TSA assumes the function of watch list matching from a covered aircraft operator, in accordance with proposed § 1560.105, TSA would require that aircraft operator request identification, identify individuals for enhanced screening, or deny individuals boarding or access to a sterile area, in accordance with TSA instructions. TSA proposes to inform each covered aircraft operator in writing at least 60 days before the date on which TSA will assume the watch list matching function.

(8) Aircraft operators that begin covered operations after the effective date of this rule will be covered by this rule.

I. Additional Issues Under Consideration and Open to Public Comment

1. Data Elements

TSA requests comments on the proposed data elements TSA would require covered aircraft operators to request from passengers and transmit to TSA under this NPRM, as discussed in section I.D. of this preamble. During operational testing and implementation, TSA will continue to evaluate the value of the data elements required.

As part of the evaluation of data elements, TSA will consider, and seeks comment on, whether to mandate collection of not just the full name, but also date of birth and gender. As currently proposed, it is optional for individuals to provide their date of birth and gender in order to provide individuals with the greatest ability to exercise control over the data elements provided. For the vast majority of individuals, a decision to forgo providing these data elements should have no effect and will result in aircraft operators, reservations agents, and TSA holding less information. For what is expected to be a relatively small number of individuals, however, a decision not to provide date of birth and gender will result in an inability to automatically distinguish them from someone on the watch list. These individuals may be inconvenienced by secondary screening that they otherwise might not have undergone or, if they are possible matches to the No-Fly List, they may be required to provide more information than they would have provided had they simply initially provided date of birth and gender. Mandating collection of all three data elements will reduce possible matches down to the smallest number of individuals.

2. Identification Requirements

In order to increase the security benefit of the Secure Flight program, TSA is also considering strengthening the identification requirements at the security screening checkpoint. For example, TSA may consider requiring individuals to present a form of identification to be able to proceed through the checkpoint and enter a sterile area. Strengthening the requirement that an individual provide evidence at the security screening checkpoint that he or she is the person to whom the boarding pass or other authorization was issued would provide additional assurance that the individual has not used an assumed identity when making a reservation in order to defeat the watch list matching process.

J. Department of Homeland Security Appropriations Act

On October 18, 2004, the President signed into law the Department of Homeland Security Appropriations Act, 2005 (2005 DHS Appropriations Act) (Pub. L. 108–334, 118 Stat. 1298, Oct. 18, 2004). Section 522(a) of the 2005 DHS Appropriations Act purports to prohibit TSA from implementing the Secure Flight program, by prohibiting the use of appropriated funds for Secure Flight on other than a test basis, until the Government Accountability Office (GAO) submits a report to the Senate and House Appropriations Committees

addressing ten operational and policy items.

Further, on October 4, 2006, the President signed into law the 2007 DHS Appropriations Act, which purports to prohibit TSA from implementing the Secure Flight program, by prohibiting the use of appropriated funds for Secure Flight on other than a test basis, until the Secretary of Homeland Security certifies, and the GAO reports, that the ten items listed in the 2005 DHS Appropriations Act are successfully met. Department of Homeland Security Appropriations Act of 2007, Pub. L. 109–295, Sec. 514 (Oct. 4, 2006).

TSA is taking appropriate action to address the ten items listed in the 2005 DHS Appropriations Act provisions. On February 23, 2007, TSA submitted a report to Congress outlining TSA's plan for certification under the 2007 DHS Appropriations Act.

Certification of some of the 2005 DHS Appropriations Act provisions cannot be completed until operational testing is conducted with at least one covered aircraft operator. As discussed above, TSA would conduct operational testing with aircraft operators before fully implementing the Secure Flight program for covered aircraft operators under this proposed rule. Additionally, although not required, covered aircraft operators may voluntarily choose to begin testing with TSA prior to publication of a final rule.

After operational testing with at least one aircraft operator and the correction of any problems uncovered during the testing, DHS will be able to certify that the ten items listed in the 2005 DHS Appropriations Act have been successfully met. Once DHS makes the required certification, the Department plans to provide an opportunity for GAO to submit its report. TSA would publish a notice in the **Federal Register** announcing that it is ready to assume the watch list matching function from the first covered aircraft operator.

II. Section-by-Section Analysis

Part 1540—Civil Aviation Security: General Rules

Section 1540.107—Submission to Screening and Inspection

Under current § 1540.107, individuals must submit to screening and inspection of their persons and their accessible property in order to enter a sterile area or board an aircraft. The proposed rule would add an additional requirement concerning the verifying identity document. The current regulatory text in § 1540.107 would become proposed § 1540.107(a).

The proposed rule would add § 1540.107(b), which provides that an individual must provide his or her full name when making a reservation for a covered flight or a request for authorization to enter a sterile area.

When TSA has not provided watch list matching results or has placed an individual on inhibited status, covered aircraft operators would not be permitted to issue a boarding pass to the individual and would be required to request a verifying identity document, as described in § 1560.3, from the individual, as explained further in the discussion of § 1560.9 below. Therefore, the proposed rule would add § 1540.107(c) to prohibit any individual from boarding an aircraft or accessing a sterile area who fails to present a verifying identity document when a covered aircraft operator requests it under proposed § 1560.9. TSA may permit certain individuals who do not present a verifying identity document, as described in § 1560.9(c)(1), to board a flight or enter a sterile area, on a case-by-case basis after determining that the individuals have valid reasons for not presenting a verifying identity document.

Part 1544—Aircraft Operator Security: Air Carriers and Commercial Operators

Section 1544.103—Form, Content, and Availability

Section 1544.103(c) lists the contents of aircraft operators' security programs. The proposed rule adds § 1544.103(c)(22) to make the AOIP a part of the security programs. Further discussion of the inclusion of the AOIP in the security program is included in the Section-by-Section Analysis portion for § 1560.13—Aircraft Operator Implementation Plan.

Subpart A—General

Part 1560—Secure Flight Program

The proposed rule adds a new part 1560 to title 49, setting forth the obligations of covered aircraft operators and covered airport operators under the Secure Flight program.

Section 1560.1—Scope, Purpose, and Implementation

Section 1560.1 of the proposed rule states the scope, purpose, and implementation of new part 1560. Under § 1560.1(a), new part 1560 would apply to aircraft operators required to adopt a full program under 49 CFR 1544.101(a) and foreign air carriers required to adopt a security program under 49 CFR 1546.101(a) or (b). This proposed rule would also cover airport operators rule in the event that TSA approves a program through which an airport operator may similarly authorize non-traveling individuals to enter a sterile area.

Proposed § 1560.1(b) also sets forth the purpose of new part 1560, which is intended for the dual mission of facilitating legitimate air travel by the general public, as well as the effective detection of individuals identified on Federal Government watch lists. As part of TSA's layered approach to aviation security, the Secure Flight program seeks to enhance the security of domestic and international air travel by moving the passenger watch list matching function from individual aircraft operators to the Government. To support this mission, TSA requires enhanced watch list matching capabilities and processes to accurately and consistently identify individuals on Government watch lists who may pose a threat to aviation or national security.

Finally, proposed § 1560.1(c) describes an implementation approach where Secure Flight program capabilities are phased in over a period of time. Each covered aircraft operator would be required to begin requesting passenger and non-traveler information and have the capability to transmit the required information to TSA by a TSA-specified date. As discussed in section I(G) of this preamble, TSA anticipates that the date would be 60 days after the effective date of the final rule. The date and manner in which individual covered aircraft operators would begin transmitting passenger information to TSA for watch list matching would be set forth in the covered aircraft operator's AOIP, as described in further detail in the analysis of § 1560.109. TSA would not publicly release the specific implementation dates for each covered aircraft operator, because such information is sensitive security information (SSI) under 49 CFR part 1520.

TSA anticipates that the first phase of Secure Flight under this proposed rule would result in the transfer of responsibility for domestic passenger watch list matching from covered U.S. aircraft operators to TSA. The second phase of Secure Flight under this proposed rule would result in the transfer of responsibility for all other passenger watch list matching conducted by covered U.S. aircraft operators as well as passenger watch list matching for flights arriving in or departing from the United States and flights overflying the continental United States operated by covered foreign air carriers to TSA.

Below is a table that sets forth the proposed implementation requirements of this NPRM:

	Optional implementation available[20]	Notification sent to covered operator	Implementation required
Submission of an AOIP	The date of publication of the final rule.	This notice of proposed rulemaking.	30 days after the effective date of this rule.
Covered aircraft operators begin requesting required information from passengers for domestic flights.	None	This notice of proposed rulemaking.	60 days after the effective date of this rule.
Covered aircraft operators begin transmitting SFPD to TSA for domestic flights.	None	Provided in the covered aircraft operator's AOIP.	The date specified in the covered aircraft operator's AOIP.
TSA will assume watch list matching function from covered aircraft operators.	None	Written notification 60 days prior to the date of required implementation.	60 days after notification from TSA.
Covered aircraft operators must begin requesting known traveler number from passengers.	None	Written notification 30 days prior to the date of required implementation.	30 days after notification from TSA.
Covered aircraft operators begin requesting required information from passengers for international flights.	None	This notice of proposed rulemaking.	60 days after the effective date of this rule.
Covered aircraft operators begin transmitting SFPD to TSA for international flights.	None	Provided in the covered aircraft operator's AOIP.	The date specified in the covered aircraft operator's AOIP.

Section 1560.3—Terms Used in This Part

Aircraft Operator Implementation Plan (AOIP). Under proposed § 1560.3, ''Aircraft Operator Implementation Plan'' or ''AOIP'' means a written procedure describing how and when a covered aircraft operator or airport operator transmits passenger and flight information and non-traveler information to TSA, as well as other related matters discussed in § 1560.109 or the Consolidated User Guide.

Airport Code. This proposed rule defines ''airport code'' as the official code for an airport designated by the International Air Transport Association (IATA).

Consolidated User Guide. The proposed rule defines ''Consolidated User Guide'' as the document developed by DHS to provide guidance to aircraft operators that must transmit passenger information to one or more components of DHS on operational processing and transmission of passenger information to all required components in a unified manner.

Covered Aircraft Operator. Section 1560.3 of this proposed rule defines ''covered aircraft operator'' as each aircraft operator required to carry out a full program under 49 CFR 1544.101(a) or a security program under 49 CFR 1546.101(a) or (b).

Covered Airport Operator. For purposes of proposed part 1560, ''covered airport operator'' means each airport operator that seeks to authorize non-traveling individuals to enter a sterile area for a purpose permitted by TSA. ''Airport operator'' is defined in § 1540.5 as a person that operates an airport serving an aircraft operator or a foreign air carrier required to have a security program under 49 CFR parts 1544 or 1546. Because non-traveling individuals who enter a sterile area must be subject to watch list matching, airport operators that seek to authorize their entry to a sterile area are covered by this proposed rule.

Covered Flight. This proposed rule defines the term ''covered flight'' to describe those flights for which TSA would conduct passenger watch list matching. This proposed rule would cover any operation of a U.S. aircraft operator that is subject to or operated under a full program under 49 CFR 1544.101(a). This includes flights operated by such aircraft operators anywhere in the world. ''Covered flight'' also means any operation of a foreign air carrier subject to or operated under a security program under 49 CFR 1546.101(a) or (b) arriving in or departing from the United States, or overflying the continental United States. Covered flight does not include any flight for which TSA has determined that the Federal Government (e.g., CBP) is conducting passenger matching comparable to the matching conducted pursuant to this part.

In the event TSA determines that a different Federal Government agency is conducting comparable watch list matching to matching under Secure Flight for a particular flight, TSA would inform the covered aircraft operator that that flight does not constitute covered flights under the proposed rule.

Date of Birth. For purposes of proposed part 1560, ''date of birth'' means the day, month, and year of an individual's birth.

Department of Homeland Security Traveler Redress Inquiry Program or *DHS TRIP.* For purposes of this proposed rule, DHS TRIP means the voluntary program through which individuals may request redress if they believe they have been unfairly or incorrectly (1) denied or delayed boarding transportation due to DHS screening programs, (2) denied or delayed entry into or departure from the United States at a port of entry, or (3) identified for additional (secondary) screening at U.S. transportation facilities, including airports and seaports.

Full Name. TSA needs an individual's complete name to perform effective watch list matching. However, TSA recognizes that in many non-English speaking cultures, family names may be given first, as opposed to being used as a last name. In order to address the differences in naming conventions, TSA is proposing to define ''full name'' as an individual's full name as it appears on a verifying identity document held by that individual.

Inhibited Status. Proposed § 1560.3 defines ''inhibited status'' as the status of a passenger or non-traveling individual to whom TSA has instructed a covered aircraft operator or a covered airport operator not to issue a boarding pass or provide access to the sterile area.

Itinerary Information. This proposed rule defines ''itinerary information'' as

[20] Aircraft operators that voluntarily choose to participate in testing with TSA before required to do so under the final rule may begin to implement some or all of the requirements of this proposed rule.

information reflecting a passenger's or non-traveling individual's itinerary specified in the covered aircraft operator's AOIP. For passengers, itinerary information includes:

(1) Departure airport code.
(2) Aircraft operator.
(3) Departure date.
(4) Departure time.
(5) Arrival date.
(6) Scheduled arrival time.
(7) Arrival airport code.
(8) Flight number.
(9) Operating carrier (if available).

For non-traveling individuals, itinerary information is the airport code for the sterile area to which the non-traveler seeks access.

Known Traveler Number. For purposes of proposed part 1560, ''known traveler number'' means a unique number assigned to individuals for whom the Federal Government has conducted a security threat assessment and determined do not pose a security threat. TSA would require covered aircraft operators to request a known traveler number from passengers and non-traveling individuals after TSA implements this provision and notifies covered aircraft operators in writing that they must begin to request it.

Non-traveling Individual (non-traveler). For purposes of proposed part 1560, ''non-traveling individual'' or ''non-traveler'' means an individual to whom a covered aircraft operator or covered airport operator seeks to issue an authorization to enter the sterile area of an airport in order to escort a minor or a passenger with disabilities or for some other purpose permitted by TSA. ''Non-traveling individual'' does not include employees or agents of airport or aircraft operators or other individuals whose access to a sterile area is governed by another TSA regulation or security directive.

Overflying the Continental United States. This proposed rule defines ''overflying the continental United States'' as departing from an airport or location outside the United States, and transiting the airspace of the continental United States en route to another airport or location outside the United States. Airspace of the continental United States includes the airspace over the continental United States and the airspace overlying the territorial waters between the continental United States coast and 12 nautical miles from the continental United States coast. However, the proposed rule provides that ''overflying the continental United States'' does not apply to flights that transit the airspace of the continental United States between two airports or locations in the same country, where that country is Canada or Mexico. For example, a flight operated by Air Canada between Toronto and Vancouver that transits the airspace over Michigan and Illinois would not be ''overflying the continental United States'' for purposes of this proposed rule. The Assistant Secretary of Homeland Security (Transportation Security Administration) may exclude other categories of flights from the definition of ''overflying the continental United States'' in writing to the affected aircraft operators. TSA is also considering, and requests comments on, whether ''overflying the continental United States'' should not apply to flights overflying selected geographic areas of the continental United States, based on a risk assessment.

In this proposed rule, flights ''overflying the continental United States'' are a category of ''covered flights'' for which TSA would conduct passenger watch list matching in order to protect the airspace over the continental United States and prevent individuals on a watch list from taking control of an aircraft with the hostile intent to harm the United States. As discussed above, TSA has limited the proposed information collection requirements for Secure Flight, including for passengers ''overflying the continental United States,'' to the data elements TSA believes are minimally necessary for effective watch list matching of aviation passengers. The limited Secure Flight Passenger Data collected for passengers on flights ''overflying the continental United States'' will be used for the limited purpose of watch list matching and will be retained for a short period of time. We welcome comments on the timeframe for retention of information collected for passengers on such flights.

Under the proposed rule, individuals on the No Fly component of the watch list would be prohibited from boarding flights that would be entering the airspace of the continental United States and individuals on the Selectee component of the watch list would undergo enhanced screening prior to boarding such a flight. An aircraft carrying an individual or individuals on the watch list may be kept out of the airspace of the continental United States or rerouted away from populated areas and critical infrastructure within the continental United States. In addition, if an aircraft carrying an individual on the watch list were permitted to continue through the airspace of the United States, the aircraft may be escorted by military aircraft to protect against an effort to harm the United States.

Passenger. This proposed rule defines ''passenger'' as an individual who has, or seeks to obtain, a reservation for transport on a covered flight. Proposed § 1560.3 expressly excludes from the definition of ''passenger'' any crew member traveling on duty. The definition also excludes any individual with flight deck privileges under 49 CFR 1544.237 traveling on the flight deck. The definition does not exclude an employee who is not on duty, such as an employee on deadhead status, and who is traveling in the cabin.

Passenger Resolution Information (PRI). For purposes of proposed part 1560, ''Passenger Resolution Information'' or ''PRI'' is the information that TSA may request that a covered aircraft operator or covered airport operator provide to TSA for an individual whom TSA places in an inhibited status and from whom the covered aircraft operator or covered airport operator is required to request additional information. TSA may request that a covered aircraft operator or covered airport operator provide to TSA any subset of PRI that is necessary to resolve a potential match to a watch list. PRI includes, but is not limited to, the following:

(1) Covered aircraft operator's agent identification number or agent sine, which is a term used in the aviation industry to mean an agent's personal identification code;
(2) Type of verifying identity document presented by the passenger;
(3) Identification number on the verifying identity document;
(4) Verifying identity document issue date;
(5) Name of the Governmental authority that issued the verifying identity document; and
(6) Physical attributes of the passenger such as height, eye color, or scars, if requested by TSA.

Passport Information. Proposed § 1560.3 defines ''Passport information'' to include the following information from an individual's passport:

(1) Passport number.
(2) Country of issuance.
(3) Expiration date.
(4) Gender.
(5) Full name.

Redress Number. For purposes of proposed part 1560, ''Redress Number'' means the number assigned by DHS TRIP to an individual through the redress process described in proposed 49 CFR part 1560, subpart C.

Secure Flight Passenger Data (SFPD). For purposes of this proposed rule, ''Secure Flight Passenger Data'' or ''SFPD'' is the information regarding a passenger or non-traveling individual

that a covered aircraft operator or covered airport operator transmits to TSA, to the extent available, pursuant to § 1560.101. SFPD is the following information regarding a passenger or non-traveling individual:

(1) Full name.
(2) Date of birth.
(3) Gender.
(4) Redress number or known traveler number (once implemented).
(5) Passport information.
(6) Reservation control number.
(7) Record sequence number.
(8) Record type.
(9) Passenger update indicator.
(10) Traveler reference number.
(11) Itinerary information.

Self-service Kiosk. A ''self-service kiosk'' is a kiosk operated by a covered aircraft operator that is capable of accepting a passenger reservation or a request for authorization to enter a sterile area from a non-traveling individual.

Sterile Area. A ''sterile area'' is the portion of an airport defined in 49 CFR 1540.5 and generally means an area with access limited to persons who have undergone security screening by TSA.

Terrorist Screening Center (TSC). This proposed rule defines TSC as the entity established by the Attorney General to carry out Homeland Security Presidential Directive 6 (HSPD–6), dated September 16, 2003, to consolidate the Federal Government's approach to terrorism screening and provide for the appropriate and lawful use of terrorist information in screening processes.

Verifying Identity Document. Proposed § 1560.3 defines ''verifying identity document'' as a valid non-expired passport issued by a foreign government or a valid non-expired document issued by a Government (Federal, State, or tribal) and that includes the following information for the individual:

1. Full name.
2. Date of birth.
3. Photograph of the individual.

Watch list. For purposes of proposed part 1560, ''watch list'' refers to the No Fly and Selectee List components of the TSDB maintained by the TSC. For certain flights, the ''watch list'' may include the larger set of watch lists maintained by the Federal Government as warranted by security considerations.

Subpart B—Collection and Transmission of Secure Flight Passenger Data for Watch List Matching

Section 1560.101—Request for and Transmission of Information to TSA

Proposed § 1560.101 sets forth the requirement that covered aircraft operators request passenger information and non-traveler information and transmit such information to TSA.

Under proposed § 1560.101(a), covered aircraft operators must begin requesting all required information and have the capability to transmit required information on a date to be specified by TSA. TSA anticipates requiring covered U.S. aircraft operators to begin requesting all required information no later than 60 days after the effective date of the final rule. TSA would require aircraft operators that become covered aircraft operators after the effective date to begin requesting passenger and non-traveler information the date it becomes a covered operator. Covered aircraft operators would then begin transmitting required information to TSA in accordance with their AOIP. TSA plans to phase covered aircraft operators into Secure Flight over an extended period of time, with the first covered aircraft operators projected to transmit their SFPD to TSA no later than 60 days after the effective date.

The proposed definition of SFPD lists the information that covered aircraft operators would be required to transmit, to the extent available, under proposed § 1560.101(b). From that list, covered aircraft operators would be required to ask individuals for their full name, date of birth, gender, and Redress Number or known traveler number when they make a reservation with the covered aircraft operator or seek access to an airport sterile area. Proposed § 1560.101(a)(3) states that covered aircraft operators may not accept a reservation, or accept a request for access to a sterile area, for any individual who does not provide a full name. Although aircraft operators would be required to request this information for watch list matching purposes, passengers and non-traveling individuals would not be required to provide their date of birth, gender, or Redress Number (if applicable) to make a reservation or a request for authorization to enter a sterile area. Although individuals would not be required to provide their date of birth, gender, or Redress Number, were they to provide it they would be subject to § 1540.103(b) regarding making a fraudulent or intentionally false record entry.

Secure Flight Passenger Data with missing information may result in TSA being unable to distinguish the individual from a person on the watch list. Consequently, TSA may instruct the covered aircraft operator to place the individual on inhibited status or to designate the individual for enhanced screening. A covered aircraft operator would not be able to issue a boarding pass or authorization to enter a sterile area to an individual on inhibited status unless the resolution process resulted in TSA giving an instruction permitting the covered aircraft operator to issue a boarding pass or authorization.

Although TSA would not require covered aircraft operators to ask for passport information from individuals, TSA would require covered aircraft operators to transmit that information if they collect passport information in the normal course of business or in accordance with another regulatory requirement, such as APIS. TSA would use passport information, as well as full name, date of birth, gender, and Redress Number for watch list matching purposes.

TSA would use the other information in the Secure Flight Passenger Data—the reservation control number, the record sequence number, the record type, the passenger update indicator, the traveler reference number, and the itinerary information—to manage the SFPD. TSA would use the reservation control number and the record sequence number to identify SFPD for a particular individual and to establish the version level of watch list matching requests or changes to the SFPD. The record type would indicate the type of record the covered aircraft operator is transmitting and the passenger update indicator would flag an individual's SFPD if that individual's information has changed. The traveler reference number would be assigned to each passenger in a SFPD transmission to TSA. This would allow the system to correctly associate watch list matching results to each passenger in a SFPD transmission, which is particularly important in cases where a SFPD transmission contains more than one passenger.

Proposed § 1560.101(a)(2) also provides TSA may require covered aircraft operators to begin accepting other known traveler numbers from Federal programs approved for use by TSA from passengers and non-travelers. TSA would inform covered aircraft operators in writing of the date on which they must begin to request an approved category of known traveler numbers. TSA expects that the covered aircraft operator would request this information from the individual making a reservation on a covered flight or requesting access to a sterile area. The covered aircraft operator must include the information provided by the passenger in response to this request in the SFPD. When TSA begins accepting known traveler numbers, TSA will only require the covered aircraft operator to include one reference number in the SFPD. That reference number could be

a redress number or a known traveler number.

To ensure that covered aircraft operators request and collect the required information at the time an individual makes a reservation, proposed § 1560.101(a)(4) makes covered aircraft operators responsible for ensuring that third parties (*i.e.*, travel agencies) that generate a reservation on the covered aircraft operator's behalf take the steps necessary to comply with the requirements of proposed § 1560.101.

Proposed § 1560.101(b) requires covered aircraft operators to transmit SFPD to TSA prior to flight departure time, in accordance with each aircraft operator's AOIP. TSA anticipates requiring that covered aircraft operators transmit SFPD to TSA approximately 72 hours prior to scheduled flight departure time for reservations made 72 hours or more before the scheduled departure time of the flight, because the vast majority of reservations are completed by 72 hours prior to flight departure time and remain unchanged after that time. For reservations made within 72 hours of scheduled flight departure time, TSA anticipates requiring covered aircraft operators to transmit the SFPD immediately after the reservation is made.

TSA would require covered aircraft operators to transmit SFPD for each flight even if the flight is a connecting flight or the return flight of a roundtrip reservation for the passenger. TSA would not require covered aircraft operators to transmit separate SFPD for continuing segments of a through flight. After TSA receives the SFPD transmission under proposed § 1560.101, it will compare the SFPD provided by the covered aircraft operators to the watch list.

Covered aircraft operators would have the option to transmit SFPD to TSA individually or in batch transmissions. Covered aircraft operators would also have to establish connectivity to TSA, most likely through one of the following methods: (1) By establishing a direct connection to TSA; (2) through a secure virtual private network using the Internet or a service provider's private network; or (3) through a third-party value added network. Regardless of which connectivity method covered aircraft operators would use to communicate with TSA, the covered aircraft operators would be responsible for all costs associated with transmitting data from the covered aircraft operator to TSA and vice versa. TSA anticipates that covered aircraft operators would select the most efficient method for the anticipated volume of messaging between their system and Secure Flight.

TSA is aware that other Federal agencies, such as CBP, are conducting, or will conduct, watch list matching for airline passengers. TSA is working with these other agencies to develop ways to eliminate unnecessary duplication of comparable screening efforts and thereby reduce governmental and private sector costs.

Covered aircraft operators would be required to accurately transmit passenger and non-traveler SFPD. However, covered aircraft operators would not be required to validate the underlying accuracy of the collected passenger information on covered domestic flights [21] or non-traveler information. Furthermore proposed § 1560.101(d) would require covered aircraft operators to transmit information updates to reflect changes to any information required in the SFPD.

Section 1560.103—Notice

TSA is committed to providing transparency about the Secure Flight program. In order to inform passengers and non-traveling individuals about the use of their personally identifying information, TSA will publish on its Web site a privacy notice that explains why TSA is collecting this information, how it will use the information, and the effect of not providing this information. Additionally, this proposed rule would require covered aircraft operators that collect information for TSA to use in connection with Secure Flight watch list matching to provide the privacy notice to individuals from whom information is collected through a Web site or a self-service kiosk.

Proposed § 1560.103(a) would require a covered aircraft operator to make the privacy notice available before the covered aircraft operator collects the information. Covered aircraft operators must make available, on their Web sites, through the aircraft operator's self-service kiosk, or through a link to TSA's Web site, the following complete privacy notice, as set forth in proposed § 1560.103(b):

The Transportation Security Administration requires us to collect information from you for purposes of watch list matching, under the authority of 49 U.S.C. sec. 114, and the Intelligence Reform and Terrorism Prevention Act of 2004. Providing this information is voluntary; however, if it is not provided, you may be subject to additional screening or denied transport or authorization to enter a sterile area. TSA may share information you provide with law enforcement or intelligence agencies or others under its published system of records notice. For more on TSA Privacy policies or to view the system of records notice and the privacy impact assessment, please see TSA's Web site at *www.tsa.gov.*

This requirement would also apply to information collected on third party internet reservation Web sites for reservations on covered flights. Covered aircraft operators would be responsible for ensuring that these Web sites make available the complete privacy notice or provide a link to TSA's Web site.

Covered aircraft operators must use the above language to provide the complete privacy notice, unless TSA approves alternative language. For instance, if a governmental entity or entities develop a common privacy notice for use for international flights, that common privacy notice may be approved for use in lieu of the privacy notice above. Individuals who wish further information with respect to TSA's privacy policies are referred to TSA's Web site.

In the event a covered aircraft operator creates an alternative electronic means to request information in order to comply with § 1560.101(a) from individuals directly, proposed § 1560.103(a) would require the covered aircraft operator to make the privacy notice available through that new mechanism, unless TSA provided an exemption. This provision is intended to ensure that the privacy notice is available to individuals in the event electronic means to collect information directly from individuals, beyond Web sites and self-service kiosks, emerge in the future through aviation industry innovation.

DHS requests comments on this notice provision generally. In particular, DHS requests comments on how a privacy notice could be provided (if necessary and considering such issues as feasibility, costs, and the effectiveness of the notice) during the collection of information through means not identified in proposed sec. 1560.103.

Section 1560.105—Denial of Transport or Sterile Area Access and Designation for Enhanced Screening

Proposed § 1560.105 would apply to a covered aircraft operator beginning on the date that TSA assumes the watch list matching function from that aircraft operator. In order to determine whether

[21] Covered aircraft operators would validate passenger information on covered international flights because CBP regulations at 19 CFR Part 122 require covered aircraft operators to validate passengers' APIS information (which includes the passport or other appropriate travel document).

a passenger or non-traveling individual poses a threat to civil aviation or national security under the proposed Secure Flight program, TSA must conduct watch list matching of the individual. Therefore, consistent with authorities granted under 49 U.S.C. 114(h)(3) and 44901(a) regarding the screening of passengers and property, TSA would prohibit covered aircraft operators from issuing a boarding pass until TSA has authorized release of the boarding pass upon conclusion of the watch list matching process. TSA also is proposing to apply this requirement to non-traveling individuals who seek authorization from a covered aircraft operator to enter an airport sterile area, because such individuals may attempt to board a flight as a passenger, pass prohibited items to a passenger, or otherwise become a security threat for that airport, acting alone or in concert with others in the sterile area.

Once TSA receives passenger or non-traveler SFPD from covered aircraft operators, TSA, in coordination with TSC where necessary, will compare that information to information contained in the watch list. TSA will then send the covered aircraft operator the results of the watch list matching process. In most cases, TSA expects to be able to complete the watch list matching process for a passenger based on the SFPD transmitted to TSA in accordance with proposed § 1560.101, and then communicate the boarding pass printing instruction to the covered aircraft operator prior to the time the passenger arrives at the airport for the flight.

Proposed § 1560.105(b) provides that a covered aircraft operator would not be permitted to issue a boarding pass or other authorization to enter a sterile area to a passenger or a non-traveling individual and must not allow that individual to board an aircraft or enter a sterile area until TSA informs the covered aircraft operator of the results of watch list matching for that passenger or non-traveling individual. If the covered aircraft operator transmitted updated SFPD in accordance with proposed § 1560.101(c), previous TSA instructions would be voided. The covered aircraft operator would then be required to wait for watch list matching results from TSA, in response to the most recent SFPD submission for that passenger or non-traveling individual, to ensure that the covered aircraft operator is acting on the most accurate instruction from TSA.

Under proposed § 1560.105(b), TSA would send one of three instructions to covered aircraft operators after they transmit SFPD to TSA. First, TSA may instruct a covered aircraft operator that a passenger or non-traveling individual must be placed on inhibited status. In that case, the covered aircraft operator must not issue a boarding pass, or other authorization to enter a sterile area, to the passenger or a non-traveling individual, and the covered aircraft operator must not allow an inhibited individual to board a flight or enter a sterile area.

Second, TSA may instruct the covered aircraft operator that the passenger or non-traveling individual has been selected for enhanced screening at a security checkpoint. In that situation, the covered aircraft operator may issue the passenger a boarding pass or the non-traveling individual authorization to enter the sterile area but must identify the passenger or non-traveling individual for enhanced screening, in accordance with procedures in the aircraft operator's security program. Third, TSA may send a cleared instruction for a passenger or non-traveling individual. In that case, the covered aircraft operator is permitted to issue the passenger or non-traveling individual a cleared boarding pass or authorization to enter the sterile area, unless the covered aircraft operator is required to identify the passenger or non-traveling individual for enhanced screening under other TSA procedures.

As part of TSA's efforts to enhance boarding pass security and prevent fraud, TSA would require covered aircraft operators to place certain information on the boarding passes for passengers or authorizations to enter a sterile area for non-traveling individuals. As reflected in the proposed rule and explained in further detail below, TSA is considering requiring the information to be in a code format such as a bar code or optical character recognition format. The purpose of placing a code on the boarding passes and the authorizations to enter a sterile area is to prevent the use of unauthorized or altered boarding passes or authorizations to enter a sterile area by individuals who wish to fraudulently gain access to the sterile area or to board an aircraft. The code would not include any personally identifying information. TSA may also consider other forms of technology to verify the authenticity of boarding passes and authorizations to enter a sterile area. TSA seeks comments on the use of bar codes, optical character recognition, or other form of technology to ensure the integrity of the boarding passes and authorizations to enter a sterile area.

Under the proposed rule, TSA's boarding pass instructions would include coding instructions for placing codes on the boarding passes or authorizations to enter a sterile area. The coding instructions would include a unique TSA-generated character string for security. TSA would not permit covered aircraft operators to issue a boarding pass or authorization to enter a sterile area unless the covered aircraft operator had placed the code on the boarding pass or authorization to enter a sterile area, and TSA would require covered aircraft operators to place the code on the boarding passes or authorizations to enter a sterile area separately from codes used for any other purposes. TSA authorized personnel with devices to read the codes would have the ability to scan the codes and authenticate the document. The Consolidated User Guide would provide technical information concerning the transmission and receipt of coded data. TSA would require aircraft operators to comply with the technical requirements in the Consolidated User Guide for placing codes on boarding passes and authorizations.

TSA may consider developing a system whereby the devices used to read the code may be able to communicate with the Secure Flight program to verify some of the information in the SFPD and whether the individual has been selected for enhanced screening. With this system, the codes themselves still would not include any personally identifying information and the personally identifying information could only be accessed through a secure reading device. TSA seeks comment on the technology, privacy, and compliance issues associated with implementing a system that would place information on boarding passes and authorizations to enter a sterile area to ensure that the watch list matching results correspond to the information on boarding passes and authorizations to enter a sterile area.

After TSA has returned to a covered aircraft operator a boarding pass instruction that a passenger must be placed on inhibited status or selected for enhanced screening, the covered aircraft operator cannot change that boarding pass instruction unless TSA sends an updated instruction based on additional information, such as an updated watch list or updated SFPD or otherwise authorizes the covered aircraft operator to change the boarding instruction. If TSA sends an updated instruction to a covered aircraft operator for a passenger or non-traveling individual, the covered aircraft operator must acknowledge receipt of the updated instruction, comply with the updated instruction, and ignore all

previous instruction for that passenger or non-traveling individual. However, a covered aircraft operator can designate a more restrictive boarding pass status in conjunction with other TSA or aircraft operator procedures.

If TSA has not provided a covered aircraft operator with watch list matching results for an individual by the time the individual attempts to check-in, or has informed the aircraft operator that an individual has been placed on inhibited status, the covered aircraft operator must provide TSA with additional information on the individual. This may be necessary if the available information for that individual is insufficient to distinguish him or her from a person on the watch list. Therefore, under proposed § 1560.105(c) it would be necessary for the covered aircraft operator to request a verifying identity document from the individual to verify the SFPD already provided or obtain SFPD that was not provided at the time of reservation or at the time of check-in at the airport. Covered aircraft operators would then be required to update the SFPD with information from the verifying identity document and transmit the updated SFPD to TSA.

However, under proposed § 1560.105(c)(4), this requirement would not apply to minors under the age of 18 who do not have a verifying identity document. For those minors, TSA may authorize the minor, or an adult accompanying the minor, to state the minor's full name and date of birth on a case-by-case basis.

In this regard, the NPRM also proposes to amend TSA's regulations by adding a new requirement in 49 CFR 1540.107 that a passenger seeking to obtain a boarding pass, or a non-traveling individual seeking access to an airport sterile area, must present a verifying identity document, as described in proposed § 1560.105(c)(1), if a covered aircraft operator requests one for watch list matching purposes, in accordance with proposed § 1560.105(c)(1). Under the proposed amendment to § 1540.107 and proposed § 1560.105(d), if an individual fails to comply with this request from a covered aircraft operator, he or she would be denied a boarding pass (or authorization to enter a sterile area), unless otherwise authorized by TSA. As discussed previously, TSA may authorize exceptions to the above requirement for verifying identity document on a case-by-case basis.

If TSA needs additional information to resolve a possible misidentification, or to confirm that the passenger or non-traveling individual is the individual on the watch list, TSA may request that the aircraft operator communicate additional identifying information, referred to as PRI. For example, TSA may request biographical information such as height, hair color, eye color, or distinctive scars. TSA may request the information necessary for TSA, in coordination with the TSC, to resolve the possible misidentification or confirm that the individual is the person on a watch list. TSA will not require the covered aircraft operator to transmit such biographical information in a SFPD transmission. TSA anticipates requesting such biographical information over the telephone.

TSA plans to retain the information necessary to complete an individual's watch list matching process, in accordance with a record retention schedule, which it will submit for approval to NARA, in order to expedite the watch list matching process for that individual during future travel. The requirements of this proposed rule would not supersede other requirements currently in effect that aircraft operators verify the identities of individuals prior to their entry into a sterile area.

Section 1560.107—Use of Watch List Matching Results by Covered Aircraft Operators

Drawing upon the privacy principle of use limitation, TSA would only share watch list matching results with covered aircraft operators for purposes of compliance with their obligations to issue boarding passes to those who are authorized to receive them, identify individuals for enhanced screening, or deny individuals boarding or sterile area access. Therefore, under proposed § 1560.107, TSA would limit covered aircraft operators' use of the watch list matching results to the purposes provided in §§ 1560.1 and 1560.105 of the proposed rule. Under the proposed rule, covered aircraft operators may not use the watch list matching results for any purpose other than security purposes.

Section 1560.109—Aircraft Operator Implementation Plan

Section 1560.109 of this proposed rule details the procedures for submission, approval, and modification of an AOIP. Under proposed § 1560.109(a), each covered aircraft operator must submit a proposed AOIP to TSA for approval. The proposed AOIP must set forth the specific means by which the covered aircraft operator will transmit passenger information and non-traveler information to TSA, the timing and frequency of transmission, and any other related matters. The AOIP may include, for example, the covered aircraft operator's plan for dealing with a system outage.

Because DHS recognizes that covered aircraft operators would be required to comply with multiple requirements from Federal agencies, DHS is developing the means to consolidate the receipt and management of passenger information within a single communications interface. The consolidation of required data for both TSA and CBP into a single submission is intended to ease the operational and technical burden on the aircraft operator. DHS will provide guidance on these requirements in a Consolidated User Guide. Consequently, covered aircraft operators would need to prepare their proposed AOIP in accordance with DHS's Consolidated User Guide. DHS will issue the Consolidated User Guide on, or shortly after, the date of publication of the final rule and will work with each covered aircraft operator, as necessary, to provide technical assistance in developing its AOIP. DHS will issue a draft Consolidated User Guide based on this proposed rule on, or shortly after, the date of this NPRM. Because the Consolidated User Guide is SSI, the release, handling, and protection of the Consolidated User Guide would be subject to the regulations concerning the protection of SSI in 49 CFR part 1520.

Proposed § 1560.109(a)(1) would require aircraft operators that are covered aircraft operators on the effective date of the final rule to submit their AOIP for approval no later than 30 days after the effective date. Under § 1560.109(a)(2), aircraft operators that become covered aircraft operators after the effective date must submit their AOIP as part of their security program under 49 CFR 1544.105(a) or 49 CFR 1546.105(a). TSA will review, approve, and modify these covered aircraft operators' proposed AOIP as part of its review of these covered aircraft operators' security programs.

For aircraft operators that are covered aircraft operators on the effective date, TSA will review, modify, and approve their proposed AOIP under proposed §§ 1560.109(b) and (c). If TSA approves a covered aircraft operator's proposed AOIP, the covered aircraft operator must implement the plan according to the schedule approved by TSA and set forth in the AOIP. If TSA disapproves and orders modifications to a proposed AOIP, TSA will provide written notice to the covered aircraft operator. Under proposed § 1560.109(c)(1), the covered aircraft operator has two options. The first option is to make any changes to the AOIP that TSA requests in the notice and implement the AOIP

according to the schedule approved by TSA and set forth in the AOIP. The second option is to seek a reconsideration of TSA's initial decision. In order to seek a reconsideration, a covered aircraft operator must submit its petition for reconsideration to TSA within 30 days of receiving the notice. The petition should include all supporting documentation. Under proposed § 1560.109(c)(2), a designated TSA official will review the petition and will either amend or withdraw the notice or forward the petition to the Administrator for a final decision. Within 30 days of receiving the petition, the Administrator will dispose of the petition by amending or withdrawing the notice or affirming the notice to modify. TSA may, at its discretion, grant extensions to any schedule deadlines, on its own initiative or upon the request of a covered aircraft operator.

Proposed § 1560.109 would require that the AOIP become part of the covered aircraft operator's security program (as described in 49 CFR part 1544, subpart B or 49 CFR part 1546, subpart B) once TSA approves the AOIP. Because the AOIP would be part of the security program, proposed § 1560.109(e) states that amendments to the AOIP will be reviewed and approved or disapproved in accordance with the procedures in 49 CFR 1544.105 or 49 CFR 1546.105, which govern amendments to security programs. Sections 1544.105 and 1546.105 provide procedures by which aircraft operators may seek amendments to their security programs and TSA may order amendments to security programs including emergency amendments. These sections also describe how aircraft operators may seek reconsideration of the initial decision on the amendments.

Proposed § 1560.109(f) requires that the AOIP be handled and protected as SSI in accordance with 49 CFR part 1520. Because the AOIP would be a part of the covered aircraft operator's security program, the AOIP would be SSI under § 1520.5(b)(1)(i).

Section 1560.111—Covered Airport Operators.

Section 1560.111 of this proposed rule applies to a covered airport operator that has a program approved by TSA through which the airport operator may authorize non-traveling individuals to enter a sterile area. Under proposed § 1560.111, no later than 30 days after receiving written notice from TSA, or such longer period as TSA may determine for good cause, a covered airport operator must adopt and carry out an AOIP and follow the procedures required of covered aircraft operators with respect to non-traveling individuals specified in proposed § 1560.109. A covered aircraft operator's AOIP would become a part of the covered airport operator's security program under 49 CFR part 1542, subpart B. Each covered airport operator must comply with the procedures required of covered aircraft operators in §§ 1560.101(a), (c) and (d), 1560.103, and 1560.107 of this part, and any other applicable TSA requirements.

Subpart C—Passenger Redress

Section 1560.201—Applicability

Sections 4012(a)(1) and 4012(a)(2) of IRTPA require TSA to establish appeal procedures for airline passengers who are delayed or denied boarding as a result of the watch list matching process as required by 49 U.S.C. 44903(j)(2)(C)(iii)(I), (j)(2)(G), and 49 U.S.C. 44909(c)(6)(B). Accordingly, the NPRM proposes subpart C, which provides the redress procedures for individuals who believe they have been improperly or unfairly delayed or prohibited from boarding an aircraft or entering a sterile area as a result of the Secure Flight program.

Section 1560.203—Representation by Counsel

Proposed § 1560.203 provides that any person seeking redress under subpart C may be represented by counsel at his or her own expense.

Section 1560.205—Redress Process

DHS and TSA currently provide a redress process for individuals who believe that they have been denied or delayed in boarding a flight. Proposed § 1560.205 explains the regulatory framework for the redress process for Secure Flight. If an individual believes that he or she has been improperly or unfairly delayed or prohibited from boarding an aircraft or entering a sterile area as a result of the Secure Flight program, the individual may initiate the redress process through the existing DHS TRIP process. DHS TRIP is a web-based customer service initiative developed as a voluntary program to provide a one-stop mechanism for individuals to request redress. DHS TRIP provides traveler redress intake and processing support while working with relevant DHS components to review and respond to requests for redress.

Under proposed § 1560.205, an individual seeking redress may obtain the necessary forms and information to initiate the redress process for Secure Flight on the DHS TRIP Web site at *http://www.dhs.gov/trip* or by contacting DHS TRIP by mail. The DHS TRIP Office would assign the individual a unique identifier, recognized by the Secure Flight Program as a Redress Number. Under § 1560.101 of this proposed rule, covered aircraft operators would be required to request the Redress Number from passengers and non-traveling individuals at the time of reservation or request for sterile area access, and transmit the number to TSA in the SFPD, if available.

DHS TRIP will then share the redress request with TSA and any other necessary agencies for resolution. TSA, in coordination with the TSC and other appropriate Federal law enforcement or intelligence agencies, if necessary, will review all the documentation provided by the individual and provide the individual with a timely written response. TSA will correct any erroneous information and will inform the individual when the redress process has been completed. However, TSA will neither confirm nor deny whether an individual is on the watch list, because this information is derived from classified and sensitive law enforcement and intelligence information. This protects the operational counterterrorism and intelligence collection objectives of the Federal Government, as well as the personal safety of those involved in counterterrorism investigations. The watch list remains an effective tool in the Government's counterterrorism and transportation security efforts, because its contents are not disclosed.

If TSA determines that the delay or prohibition from boarding, or access to a sterile area, resulted from a misidentification of the individual, TSA will retain the information provided by the individual to facilitate authentication of the individual's identity during future air travel and to prevent repeated and unnecessary delays of misidentified individuals, as required under 49 U.S.C. 44903(j)(2)(G)(ii).

Section 1560.207—Oversight of process

Finally, § 1560.207 of the proposed rule provides that the redress program and its implementation are subject to review by the TSA and DHS Privacy Officers and the TSA and DHS Offices for Civil Rights and Civil Liberties to ensure that the process is protecting the privacy and civil liberties of passengers and non-traveling individuals.

III. Regulatory Analyses

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations.

This proposed rule contains new information collection activities subject to the PRA. Accordingly, TSA has submitted the following information requirements to OMB for its review.

Title: Secure Flight Program.

Summary: TSA is proposing to establish this information collection in accordance with 49 U.S.C. 44903(j)(2)(C), which requires TSA to assume the passenger matching function of comparing passenger information to Federal watch lists and to establish an appeal procedure for those passengers delayed or denied boarding as a result of this process. In order to carry out effective watch list matching, TSA has determined that it must receive each individual's full name and, to the extent available, gender, date of birth, Redress Number, and known traveler number (when implemented) and passport information. Therefore, TSA is proposing to require U.S. aircraft operators that conduct certain scheduled and public charter flights, and foreign air carriers that conduct certain scheduled and public charter flights within, to or from the United States, and overflying the continental United States, to request this information from passengers or non-travelers seeking sterile area access on those flights. The covered aircraft operator must then communicate this information, as well as passport information, message management information, and itinerary information to the extent available, to TSA. The covered aircraft operator must also transmit relevant updates to the passenger's or non-traveler's information. Additionally, TSA may need the covered aircraft operators to obtain and communicate information from an individual's form of identification or a physical description (e.g., gender, height, weight, hair color, or eye color) of the individual. TSA would use all of this information during watch list matching.

Prior to submitting any passenger information or non-traveler information, covered aircraft operators must first submit to TSA an AOIP describing how and when they will transmit passenger (or non-traveler) information to TSA.

In addition to aircraft operators that authorize non-traveling individuals to enter a sterile area, TSA may require airport operators that authorize non-traveling individuals to enter a sterile area for a purpose approved by TSA to provide TSA with information regarding non-traveling individuals seeking authorization to enter a sterile area, for purposes of watch list matching, under the proposed rule.

Use of: Under 49 U.S.C. 44903(j)(2)(C)(iv), TSA is authorized to collect from aircraft operators the passenger information needed to begin implementation of this matching function. TSA will use the information to enhance the security of air travel and support the Federal Government's counterterrorism efforts by enabling TSA to conduct watch list matching through the Secure Flight program and to identify individuals who warrant further scrutiny prior to entering an airport sterile area or boarding an aircraft or who warrant denial of boarding or access to an airport sterile area on security grounds. To identify those individuals, TSA will compare individuals' identifying data to information about individuals identified on the watch list.

Respondents (including number of): The Secure Flight Program would require covered aircraft operators to submit passenger information to DHS for the purpose of watch list matching. Prior to submitting any passenger information to DHS, covered aircraft operators would first submit to TSA an Aircraft Operator Implementation Plan (AOIP). The AOIP would specify in detail the technology and processes an aircraft operator would use to transmit passenger information to DHS and receive and apply watch list responses. At the time of submission, 66 domestic and 146 foreign aircraft operators would be required to respond to the information collection. Consequently, TSA has determined this information collection would affect a total of 212 respondents. Each of these operators would be subject to both information collections; however, due to differences in the frequency of the submissions, the two collections result in differing numbers of annual respondents. Submission of AOIPs would affect an average of 71 respondents and transmission of passenger information would affect an annual average of 163 respondents. With regards to airport operators authorizing non-traveling individuals to enter a sterile area for a purpose approved by TSA, there are currently 437 domestic airports that are eligible. TSA has adopted this total as the maximum number of airport operator respondents that might transmit information to Secure Flight.

Frequency: The AOIP would be a one-time submission, whereas collection of passenger information for purposes of watch list matching must occur on at least a daily basis. The commercial passenger aviation industry provides air transport to more than 2.5 million passengers per day, and aircraft operators accept reservations for transport on a continuous basis. Therefore, in order to be effective as a security measure, watch list matching of passengers and non-traveling individuals must be carried out on a near or real-time basis. Collecting passenger or non-traveling individuals' information from respondents less frequently than daily would not allow TSA to complete watch list matching of every passenger or non-traveling individual prior to their arrival at an airport security checkpoint. TSA's collection of information from respondents must occur on at least a daily basis, if not more frequently, in order to take into account new or changed reservations for air travel.

Annual Burden Estimate: TSA has determined that the information aircraft operators would be required to collect from passengers is similar to that collected in the normal course of business and is therefore exempt from the PRA as defined in 5 CFR 1320.3(b)(2). Further, TSA was unable to estimate an hour burden for aircraft operators to transmit passenger information to DHS. TSA did not have sufficient data to calculate this burden. However, TSA has monetized the burden on the aircraft operators to modify and update their systems to transmit passenger information (see below). Accordingly, TSA has only estimated an hour burden for aircraft operators to submit their AOIPs.

TSA estimated that each covered aircraft operator would invest 400 hours in the AOIP process if the covered aircraft operator has not already connected to Customs and Border Protection's (CBP) APIS Quick Query (AQQ).[22] TSA's estimate includes high-level planning, resource allocation, budgeting and management review and approval before submitting the AOIP to TSA. Since TSA was unable to estimate the number of respondent aircraft operator that might connect to AQQ prior to implementation of Secure Flight, TSA assessed the 400 hours

[22] For carriers that are already connected to AQQ, TSA estimated that such carriers would invest 200 hours in developing their AOIPs.

against each of the respondent aircraft operator, yielding a total of 84,800 hours. Based on this total, the annual burden would be 28,300 hours.

In addition to the hour burden, it may cost respondents $129.2 million in the first three years to modify and maintain systems to accommodate the new communication requirements. This breaks down to $125,200,000 in the first two years for capital startup costs and $4,000,000 in the second and third years for operations and maintenance, for an annual average of $43,000,000. The capital startup costs encompass the cost for additional bandwidth that aircraft operators may require to transmit data from reservations booked online as well as extensive system modifications to enable two-way communication between respondents and the Secure Flight system.

With regards to airport operators authorizing non-traveling individuals to enter a sterile area for a purpose approved by TSA, TSA assumes respondents would submit an annual total of 240,000 responses. TSA anticipates that airport operators would use a web application to transmit the personal information to Secure Flight and receive a response in real time. In most cases, the TSA response should be nearly instantaneous; thus, TSA believes the proposed provision would not result in an appreciable hour burden on respondents.

TSA is soliciting comments to

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirements by October 22, 2007. Direct the comments to the address listed in the **ADDRESSES** section of this document, and fax a copy of them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS-TSA Desk Officer, at (202) 395–5806. A comment to OMB is most effective if OMB receives it within 30 days of publication. TSA will publish the OMB control number for this information collection in the **Federal Register** after OMB approves it.

As a protection provided by the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

B. Regulatory Impact Analyses

1. Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to assess the effect of regulatory changes on foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international trade standards and where appropriate, as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

TSA has prepared a separate detailed analysis document which is available to the public in the docket. With respect to these analyses, TSA provides the following conclusions and summary information.

1. TSA has determined that this is an economically significant rule within the definition of Executive Order (EO) 12866, as estimated annual costs or benefits exceed $100 million in any year. The mandatory OMB Circular A–4 Accounting statement is included in the separate complete analysis and is not repeated here.

2. The Initial Regulatory Flexibility Analysis (IRFA) shows that there is not likely a significant impact on a substantial number of small entities. As a normal practice, we provide the IRFA to the public but withhold the final formal certification of determination as required by the RFA until after we receive public comments and publish the Final Regulatory Flexibility Analysis (FRFA).

3. Although the rule in general is unlikely to cause any adverse impact on international trade, there may be potential unfavorable responses to the overflight provisions of the proposed rule.

4. The regulatory evaluation provides the required written assessment of Unfunded Mandates. The proposed rule is not likely to result in the expenditure by State, local, or tribal governments, in the aggregate, of $100 million or more annually (adjusted for inflation). However, the estimated impact on the private sector does exceed the inflation adjusted Unfunded Mandates threshold. The E.O. 12866 analysis provided below also serves as the analysis required under UMRA.

2. Executive Order 12866 Assessment Benefits

Benefits of the rule would occur in two phases: The first during operational testing and the second post-implementation. During operational testing, Secure Flight would screen passengers in parallel with the airlines. Primary responsibility for watch list matching would remain with covered aircraft operators during this period, but Secure Flight might notify aircraft operators if its watch list matching technology enabled it to detect a potential match the aircraft operator may have missed. Therefore, during the operational testing phase, benefits may include increased aviation security resulting from the detection of threats not identified by covered carriers participating in the testing.

Most of the rule's benefits would occur post-implementation. Secure Flight would standardize the watch list matching process across domestic and foreign commercial airlines. Resulting benefits could include more accurate, timely, and comprehensive screening, and a reduction in false positives. This would occur because Secure Flight would have access to more data with which to distinguish passengers from records in the watch lists than is currently available to airlines. Further, the airlines would be relieved of watch list matching responsibilities, and TSA would be relieved of distributing the watch lists. Together, these factors would contribute to the overall objective of focusing resources on passengers identified as potential threats to aviation security.

This benefit would be further augmented by the proposal to require covered airlines to print on boarding passes a unique code generated by the Secure Flight system for each watch list result returned. Depending on the final implementation method, this requirement would at a minimum allow checkpoint personnel to verify that a boarding or gate pass had been processed by the Secure Flight system. This would prevent individuals from passing through the checkpoint with a boarding or gate pass that had not originated in an airline system.

By transferring responsibility for watch list matching of international passengers from CBP to TSA, the proposed rule would consolidate passenger prescreening operations within the Department of Homeland Security (DHS), thereby reducing redundancies between similar programs and facilitating better governance. The proposed rule would enable CBP to focus its resources on its mission of protecting U.S. borders while permitting TSA to apply its expertise in watch list matching consistently across all commercial air traffic within and overflying the United States. DHS expects that reducing overlap between these agencies' missions will improve national security through more efficient and targeted use of national resources.

Other benefits could include increased security due to the watch list matching of non-traveling individuals who request access to a sterile area. Also, TSA anticipates it may allow airports to authorize non-traveling individuals to enter the airport sterile area. As a result, the proposed rule would establish requirements related to airports' transmission of data from non-traveling individuals to Secure Flight for watch list matching. These requirements would only apply to airports that requested and received authorization from TSA to grant non-traveling individuals access to the airport sterile area.

Once TSA assumed primary responsibility for watch list matching, airlines would be relieved of their passenger watch list matching responsibilities. For the purposes of its analysis, TSA assumed that domestic implementation would be completed in the first year of the rule, and international implementation would be completed in the second year. However, the actual date the carriers would be completely relieved was unknown at the time of writing and would be contingent on several factors, such as the impact of budgetary constraints and the results of operational testing. Prior to implementation, operational testing would have to demonstrate that Secure Flight did not produce a large number of false positives, processed all matching requests in an efficient and accurate manner, and interfaced with a redress system for passengers who believe they have been incorrectly delayed or denied boarding as a result of Secure Flight matching. Elimination of their watch list matching responsibilities would enable airlines to reallocate to other tasks some of their operational resources currently dedicated to comparing passenger information to the watch lists and offset some costs imposed by the regulation. Due to the vast difference in resources used by each airline for watch list matching and uncertainty regarding the actual date each would be relieved of watch list duties, TSA was unable to quantify these cost savings.

Further, while TSA conducted significant testing using previously collected passenger name record (PNR) data, no testing has been completed in a live environment using all of the passenger information requested by this proposed rule. The testing phase would provide TSA the opportunity to work with the airlines and other stakeholders to refine Secure Flight to achieve optimal results while the airlines continue to have primary responsibility for watch list matching. Thus, the testing phase would also allow TSA to collect baseline data necessary for quantification of potential benefits of Secure Flight.

TSA has included in the Regulatory Evaluation a rough ''break-even'' analysis which indicates the tradeoffs between program cost and program benefits (in the form of impact on baseline risk of a significant aviation-related terror attack) that would be required for Secure Flight to be a cost beneficial undertaking.

Costs

As required, alternatives to the primary rule requirements were analyzed. The following table provides the ten-year primary, high, and low estimates each at undiscounted, 7%, and 3% discount rates.

TOTAL COSTS BY SCENARIO AND DISCOUNT RATE

Total by scenario	Undiscounted	7% Discount	3% Discount
Primary Scenario	$3,129.9	$2,179.3	$2,659.7
High Scenario	3,907.8	2,725.8	3,323.0
Low Scenario	2,456.0	1,703.4	2,083.4

All costs in the following summary are discounted present value costs using a 7% discount rate over 10 years unless noted as an annual cost. Both in this summary and the economic evaluation, descriptive language conveys the consequences of the regulation. Although the regulatory evaluation attempts to mirror the terms and wording of the regulation, no attempt is made to precisely replicate the regulatory language and readers are cautioned that the actual regulatory text, not the text of the evaluation, is binding.

Given the global nature of commercial aviation and the prevalence of airline partnerships, TSA was unable to divide the incidence of the estimated costs between the domestic and foreign economies. Thus, the table below presents the aggregate costs attributable to the proposed Secure Flight rule. TSA has divided its discussion within each of the cost sections in the regulatory evaluation between domestic and international operations, reflecting the scope and phasing of the proposed rule. However, this distinction between costs accruing to domestic and international operations should not be confused with costs to the domestic and foreign economies.

TSA estimated the cost impacts of this rulemaking would total from $1.703 billion to $2.726 billion over 10 years, discounted at 7%. Air carriers would incur total costs of $145.2 to $476.7 million, and travel agents would incur costs of $86.5 to $257.4 million. TSA projected Federal Government costs would be from $1.114 to $1.326 billion. The total cost of outlays would be from $1.346 billion to $2.060 billion. Additionally, the cost to individuals (value of time) would be between $357.9 and $666.2 million. The following paragraphs discuss these costs.

Air carriers would incur costs to comply with requirements of this rulemaking. Over the 10-year period from 2008 to 2017, TSA estimated air

carriers would incur average annual discounted costs of $15.6 to $52.5 million to reprogram their computer systems to accept the additional data fields required by the rule and achieve two-way connectivity with TSA. Although TSA would require covered aircraft operators to collect and transmit SFPD, TSA would not mandate how covered aircraft operators would store or extract passengers' SFPD. Covered aircraft operators may choose to extract SFPDs from their reservation system or develop a separate system. Based on interviews with covered airlines, TSA has assumed for the purposes of this analysis that airlines would choose to use their reservation systems to collect and transmit SFPD.

Because the proposed rule would require additional information to be requested, additional time would be required for airline call centers to complete reservations. TSA estimated these costs would be between $5.1 and $15.3 million per year. Together, the air carriers' average annual costs would range from $20.7 to $67.8 million.

The proposed rule would not directly regulate travel agents. However, aircraft operators would be required to ensure that travel agencies request the additional passenger information. Therefore, travel agents, like covered aircraft operators, would have to spend additional time to complete airline reservations. TSA estimated the average annual cost to travel agents would range from $12.3 to $36.7 million.

The Federal Government would incur several costs as a result of the rule. These costs would include network infrastructure to enable communication between TSA and covered aircraft operator data systems, hardware and software procurement, operations and maintenance, and general support for implementation. The government would further incur costs to complete adjudication of name similarities or watch list matches and also for redress activities. Finally, the government would incur costs to implement a system at checkpoints to verify the codes issued by the Secure Flight system and printed on boarding and gate passes. The Government's estimated average annual cost would be from $158.6 million to $188.7 million.

The proposed rule would also impact individuals. Time is a valuable economic resource, like labor, capital, and other factors of production, which may be utilized for work or relaxation. The loss of time imposes an opportunity cost on individuals. TSA attempted to quantify opportunity costs to individuals based on the incremental additional time required to make a reservation. TSA estimated these average annual costs to individuals would range from $51.0 to $94.8 million.

3. *Regulatory Flexibility Act Assessment:* Initial Regulatory Flexibility Analysis (IRFA)

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. Although TSA does not believe the proposed rule will have a significant impact on a substantial number of small entities, the agency has prepared an Initial Regulatory Flexibility Analysis (IRFA) for public review and comment. TSA requests comments on this IRFA and the potential impacts of the proposed rule on small businesses.

Section 1: Reasons for and Objectives of the Proposed Rule

2.1.1 Reason for the Proposed Rule

Section 4012(a) of the Intelligence Reform and Terrorism Prevention Act requires the Transportation Security Administration (TSA) to assume from aircraft operators the function of conducting pre-flight comparisons of airline passenger information to Federal Government watch lists.

2.1.2 Objective of the Proposed Rule

This proposed rule would allow TSA to begin implementation of the Secure Flight program, under which TSA would receive passenger and non-traveler information, conduct watch list matching, and transmit gate and boarding pass printing instructions back to aircraft operators indicating whether individuals should be cleared to enter the sterile area, marked as selectees, or prohibited from receiving a gate or boarding pass.

Section 2: Affected Small Business Population and Estimated Impact of Compliance

2.2.1 Aircraft Operator Small Business Population

The proposed Secure Flight rule would affect all aircraft operators conducting flight operations under a full security program per 49 CFR 1544.101(a). In general, these aircraft operators are the major passenger airlines that offer scheduled and public charter flights from commercial airports. Specifically, the covered carriers would be those performing scheduled service or public charter passenger operations either with an aircraft having a passenger seating configuration of 61 or more seats or having 60 or fewer seats if the aircraft enplanes from or deplanes into a sterile area.

Of the 66 aircraft operators that are covered by the proposed rule, TSA estimated that 24 of these can be identified as small business entities. This is based on the Small Business Administration (SBA) Office of Size Standards' size standard of ''fewer than 1,500 employees'' for small businesses within NAICS Code 481111, Scheduled Passenger Air Transportation, and those within NAICS Code 481211, Nonscheduled Chartered Passenger Air Transportation.[23] For this analysis, air carrier employee counts were developed from publicly available information and from carrier filings with the U.S. Department of Transportation's Bureau of Transportation Statistics (BTS) and Federal Aviation Administration.

In the Secure Flight regulatory evaluation, TSA divided covered carriers into four ''cost groups'' based on the nature of their reservations systems and BTS size classification (i.e., major, national, large regional, etc.).[24] These groupings correspond to the estimated costliness of reprogramming airline

[23] Small Business Administration. Table: ''Small Business Size Standards Matched to North American Industry Classification System.'' Available at *http://www.sba.gov/size/sizetable2002.html.* Accessed May 4, 2006.

[24] For more information, please see Section 1.4.1.

reservation systems to comply with the proposed Secure Flight requirements. Implementation Group 1 represents all legacy marketing carriers and their affiliates utilizing an older GDS or host airline reservation system (ARS). Legacy airlines, those flying prior to the Airline Deregulation Act of 1978, are all major airlines and have the oldest computer systems. Accordingly, TSA assumed this group would incur the highest compliance costs. Implementation Group 2 includes marketing carriers utilizing a newer GDS or host ARS, as well as national carriers subscribing to an older GDS. Implementation Group 3 represents carriers with independently maintained reservation systems TSA determined were capable of receiving a direct connection to Secure Flight, as well as regional, commuter, and small airlines subscribing to an older GDS or host ARS. Airlines with very simple or no computerized reservation systems form Group 4. Rather than requiring Group 4 carriers to establish complex systems capable of connecting directly with Secure Flight, TSA would allow them to transmit passenger information through a secure Internet portal.

In Groups 1 and 2, smaller airlines often use the reservation systems of larger airlines. For example, a passenger may book a reservation with a large, marketing airline, but the flight may be operated by a smaller airline owned by or contracting with the marketing airline (an affiliate). In such cases, TSA assumed in its regulatory evaluation that the marketing airline would bear the cost of changes to the reservation system and designated those carriers as ''points of implementation.'' Section 1.4.1 of the regulatory evaluation describes this distinction in greater detail.

In the discussion below, TSA relaxes this assumption and treats affiliate carriers as if they are marketing carriers. Since no Group 1 affiliate carriers are major airlines, they were re-categorized as Group 3 carriers (regional, commuter, or small carriers using an older GDS). Specifically, these are Carriers 3, 4, 8, and 9 in the tables.[25] Although this method ensures a potential cost is estimated for all small business carriers, TSA notes that it likely overstates the actual cost that would be incurred. Thus, for this small business analysis, TSA considers 10 carriers under Implementation Groups 2 and 3. The remaining 14 carriers belong to Group 4.

Table 2.2.1.a reports annual 2005 employment and operating revenues or sales[26] TSA gathered for these 24 airlines (in one case the financial data is from 2002). These small air carriers are active in different areas of the passenger air transportation marketplace. Some provide scheduled passenger service in small niche markets, often as part of the larger route system of an established hub and spoke carrier; others provide charter transportation services to tour groups or organizations such as professional sports teams. Some of those that provide scheduled passenger services use reservation systems hosted by one of the existing ARS providers, while others handle phone reservations or receive reservations from travel agents. All of these small airlines would be subject to the proposed rule, however, due to the size of aircraft they use and/or because of the airport environments in which they operate. Thus, these airlines would collect more information from passengers, but TSA would take over their current requirement to compare passenger manifests to the watch lists.

[25] Since in some cases the reported revenue data is proprietary, TSA substituted an ID number in place of company names.

[26] In cases for which annual revenues were not available, carrier filings of total annual sales were used as a proxy for revenue.

Table 2.2.1.a Secure Flight Small Business Air Carriers (2005 Data)

	Small Business Carrier ID #	Employees (Total Full- and Part-Time)	Annual Operating Revenues	Enplanements	Share of Total Covered Carrier Enplanements
Aircraft Operators in Implementation Groups 2 and 3	1	914	$204,000,000	1,266,293	0.199%
	2	893	$80,300,000	1,132,207	0.178%
	3	546	$78,100,000	838,959	0.051%
	4	545	$60,000,000	440,865	0.069%
	5	400	$45,100,000	636,768	0.100%
	6	380	$42,800,000	570,291	0.090%
	7	255	$18,600,000	49,242	0.008%
	8	230	$39,600,000	355,607	0.056%
	9	220	$24,000,000	141,252	0.022%
	10	50	$5,000,000	48,221	0.008%
Aircraft Operators in Implementation Group 4	11	964	$74,300,000	208,120	0.033%
	12	826	$76,392,000	344,741	0.054%
	13	739	$137,900,000	506,292	0.080%
	14	600	$68,600,000	91,571	0.014%
	15	593	$132,500,000	836,409	0.132%
	16	549	$33,400,000	329,418	0.052%
	17	411	$105,266,000	82,529	0.013%
	18	220	$6,330,000	18,707	0.003%
	19	212	$35,649,000	329,083	0.052%
	20	159	$12,000,000	35,788	0.006%
	21	75	$14,230,000	22,511	0.004%
	22	19	$930,000	Unavailable	Unavailable
	23	Unavailable	Unavailable	38,471	0.006%
	24	Unavailable	Unavailable	17,521	0.003%

2.2.2 Estimated Impact to Aircraft Operator Small Businesses

TSA determined that the proposed rule would not cause a significant economic impact for a substantial number of these small business entities based on several considerations. First, under the current procedures, these small airlines must devote effort to matching passenger identification information to TSA watch lists but are not able to establish staff and back office activities that are dedicated to these security functions due to the small scale of their operations. Instead, the existing security responsibilities are fulfilled by airline personnel who may have other unrelated duties. These scale considerations suggest that the benefits of changing the current responsibilities by implementing the proposed rule may be weighted toward these smaller airlines, when considered on a per enplanement basis.

In addition, given the variety of business activities pursued by the small carriers under consideration—scheduled passenger operations or charter operations, operations that collaborate with a larger hub and spoke carrier or that are independent of larger carriers, and operations that do or do not make use of an existing ARS host for processing reservations—it is difficult to estimate the costs that would be incurred by these small carriers should the proposed rule be implemented. In order to evaluate the possible economic impact of the proposed rule on small aircraft operators, TSA utilized two calculation methods: One for carriers in Groups 2 and 3, and a second for carriers in Group 4.

Since reprogramming and data collection costs have already been presented in the aggregate for Groups 2 and 3 in Sections 1.6.2 and 1.6.3 of the regulatory evaluation, TSA used the same techniques to calculate the potential impact to small business carriers in these two groups. Table 2.2.2.a below shows the outcome of these calculations.

TSA first assigned an estimated initial reprogramming cost to each small business carrier based on whether it belonged to Group 2 or 3 (column B). The initial reprogramming cost was used since this is the highest expenditure in any one year. Each carrier would also experience an increase in the time required to collect passenger data during reservations, as discussed in Section 1.6.3. To arrive at the maximum annual collection cost (column D), TSA annualized the total High Scenario Airline Collection Costs from Table 1.6.3.a. These airline collection costs are a function of reservations and TSA assumed an airline's share of reservations is proportional to its share of enplanements. Thus, TSA multiplied the total annual collection cost by each

carrier's share of enplanements (column C) to arrive at its proportion of the annual collection cost (column E). Adding the collection cost to the initial reprogramming cost yielded a per-carrier estimated cost of compliance (column F). TSA divided these estimated compliance costs by each carrier's reported revenue to determine the percent of revenue that would be expended on Secure Flight (column G).

Although there is no hard and fast definition for ''significant economic impact,'' agencies frequently use 2% of an entity's revenue as a threshold. As can be seen in the table, in one case the estimated compliance cost exceeds 2% of the carriers' reported 2005 revenues and in one case it exceeds 8%. After reviewing the relevant information, however, TSA determined the threshold may not be applicable in this particular case. This is because the percentage is extremely sensitive to the estimated reprogramming cost (column B). TSA's estimated reprogramming costs for these carriers are based on assumptions about limited data and may overstate the costs to smaller carriers. This consideration is especially true of carrier 10. This carrier maintained its own reservation system until August 2005, when it began subscribing to a GDS. Consequently, its reprogramming costs may be significantly lower than projected here. Further, these carriers would have the option to use the Secure Flight web interface rather than reprogram their reservation systems if they determine reprogramming would be too costly.

Based on these considerations, TSA determined the estimated compliance cost likely does not meet the requirements of a significant economic impact under the RFA; however, the agency invites comments on this analysis.

TABLE 2.2.2.a.—ESTIMATED SMALL BUSINESS IMPACT, CARRIER GROUPS 2 AND 3

Small business carrier ID #	2005 annual operating revenues (000) (A)	Estimated carrier reprogram costs (000) (B)	Share of total covered carrier Enp (percent) (C)	Annualized airline collection costs* (000) (D)	Share of airline collection costs* (000) (E) = C*D	Estimated total compliance cost* (000) (F) = B+E	Compliance cost as percent of revenues* (G) = F/A
1	$204,000	$850	0.20	$11,690	$23	$873	0.43
2	80,300	425	0.18	11,690	21	446	0.56
3	78,100	425	0.13	11,690	15	440	0.56
4	60,000	425	0.07	11,690	8	433	0.72
5	45,100	425	0.10	11,690	12	437	0.97
6	42,800	425	0.09	11,690	11	436	1.02
7	18,600	425	0.01	11,690	1	426	2.29
8	39,600	425	0.06	11,690	7	432	1.09
9	24,000	425	0.02	11,690	2	427	1.78
10	5,000	425	0.01	11,690	1	426	8.52

* Reflect totals from the high case scenario presented in the regulatory evaluation.

As discussed in Section 1.6.2 of the regulatory evaluation, TSA assumed Group 4 carriers would not have any reprogramming costs associated with implementation of Secure Flight but that 13 of the 16 Group 4 carriers would spend $100,000 in the first year of the program on staff retraining and customer outreach. TSA did not have sufficient information, however, to reliably estimate costs incurred by these carriers due to changes in their reservation process. For the purpose of discussion, TSA here calculates a unit compliance cost per enplanement in order to illustrate the average impact of the proposed rule. The results of this calculation are shown in Table 2.2.2.b.

TSA chose to use a broad assumption in developing its unit cost and therefore included the annual costs related to the entire reservations process for air transportation providers. As reported in Tables 1.6.3.a and 1.6.4.a, costs associated with the reservations process include airline and travel agency costs to make available privacy notices and request additional passenger information. In TSA's high scenario, these two categories total to approximately $34.2 million in fiscal year 2008. This value can be normalized to a per enplanement basis using the reservations forecast reported in Table 1.4.1.a, which totals 672.1 million in 2008. This normalized cost per enplanement equals $34.2/672.1, or about $0.05 per enplanement (column B).

Multiplying this normalized value by each carrier's 2005 annual enplanements total (column B) and adding in the implementation expenditure where applicable (column A), TSA estimated the cost to each of the small business entities identified (column D). As column F of Table 2.2.2.b indicates, this estimate for costs never exceeds 2% of 2005 annual revenues for these small carriers. Note further that the annual enplanements value is unadjusted for round trip itineraries or for reservations that may have been generated as part of a marketing carrier's reservations process. Thus, the estimated values in Table 2.2.2.b are very likely to be overstatements of the impact of the proposed rule on these small carriers.

Finally, as noted previously, DHS will make available a Secure Flight Internet portal for the transmittal of passenger and other itinerary data from Group 4 small airlines to TSA. The availability of this interface would simplify the transition to the environment that will prevail once the proposed rule is implemented, while providing greater assurance regarding the provision of the relevant security data to TSA for comparison to the watch lists.

TABLE 2.2.2.b.—ILLUSTRATIVE SMALL BUSINESS IMPACT, CARRIER GROUP 4

Small business carrier ID #	Assumed start-up outlay (A)	FY 2005 enplanements (B)	Maximum unit compliance cost per enplanement (C)	Compliance cost (D) = A+B*C	2005 annual operating revenues (E)	Compliance cost as percent of 2005 revenues (F) = D/E
11	$100,000	208,120	$0.05	$110,400	$74,300,000	0.15
12	100,000	344,741	0.05	117,200	76,392,000	0.15
13	100,000	506,292	0.05	125,300	137,900,000	0.09
14	100,000	91,571	0.05	104,600	68,600,000	0.15
15	100,000	836,409	0.05	141,800	132,500,000	0.11
16	100,000	329,418	0.05	116,500	33,400,000	0.35
17	100,000	82,529	0.05	104,100	105,265,872	0.10
18	100,000	18,707	0.05	100,900	6,330,280	1.59
19	100,000	329,083	0.05	116,500	35,649,201	0.33
20	100,000	35,788	0.05	101,800	12,000,000	0.85
21	100,000	22,511	0.05	101,100	14,229,510	0.71
22	0	0*	0.05	0	930,000	(1)
23	0	38,471	0.05	1,900	0	(1)
24	0	17,521	0.05	900	0	(1)

* Carrier had not yet begun reporting enplanements to BTS.
(1) Data not available.

The estimates provided in Table 2.2.2.b show how Group 4 small businesses would be impacted by Secure Flight were their operations comparable to those of airlines in Groups 1 through 3. As has been noted above, however, this is not the case. Consequently, the costs Group 4 airlines would actually incur to comply with Secure Flight may diverge significantly from the estimates presented. Nevertheless, the table illustrates that these costs would have to increase dramatically before they would constitute a significant economic impact.

In the interest of arriving at more accurate estimates, TSA has outlined the assumptions underlying its calculations in Appendix A. TSA invites comments from the public and industry. TSA particularly welcomes comments that include or identify sources of data that will assist TSA in improving its assumptions.

2.2.3 Travel Agency Small Business Population

The Small Business Administration (SBA) classifies any travel agency as a small business if it has revenues of less than $3.5 million annually.[27] The SBA data provided in Table 2.2.3.a indicate that in 2003 more than 98% of travel agencies had annual revenues less than $5 million. Although the division of the SBA revenue categories do not allow for a precise count of the number of small business, the average revenue per firm of $1.9 million for the $1 million to $5 million category indicates that many of the firms in this category have revenues below the $3.5 million threshold. Consequently, the discussion of small businesses in the travel agency industry will be a discussion about the vast number of firms.

TABLE 2.2.3.a.—DISTRIBUTION OF TRAVEL AGENCIES (NAICS 561510) BY REVENUE, 2003[28]

	Total	$0–$99,999	$100,000–$499,999	$500,000–$999,999	$1,000,000–$4,999,999	Total <$5,000,000	Total >$5,000,000
Number of Firms	14,838	6,125	6,627	1,098	714	14,564	274
Percent of Total	100.00	41.28	44.66	7.40	4.81	98.15	1.85

Tables 2.2.3.b through 2.2.3.d below reflect the recent story of the travel agent industry. The first two tables are based on 2002 data provided by the Airlines Reporting Corporation (ARC) to the National Commission to Ensure Consumer Information and Choice in the Airline Industry (the Commission). These ARC data include the gross value of airline tickets, which travel agents remit to the airlines, in addition to their commission and fee revenue. To factor out this airline revenue, the Commission stated that ''the average leisure agency derives slightly more than 50% of its revenue from commissions and fees for sale of airline tickets.''[29]

When the Commission prepared its report ''Upheaval in Travel Distribution: Impact on Consumers and Travel Agents, Report to Congress and the President'' (Commission Report), the SBA had just increased the small business revenue threshold from $1 million to $3 million for travel agents. Consequently, the Commission used $5 million in total revenue (approximately $2.5 million in commission and fee revenue) as a proxy threshold for small businesses when creating Tables 2.2.3.b and 2.2.3.c below. Although these tables do not capture the full universe of travel

[27] Small Business Administration. Table: ''Small Business Size Standards matched to North American Industry Classification System.'' Available at *http://www.sba.gov/size/sizetable2002.html.* Accessed May 4, 2006.

Note: The SBA size standard for travel agencies is based on ''total revenues, excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.''

[28] Small Business Administration. Table: ''All Industries by NAICS codes, 2003.'' See TXT file ''2003'' available at *http://www.sba.gov/advo/research/data.html.* Accessed May 6, 2006.

[29] ''Upheaval in Travel Distribution: Impact on Consumers and Travel Agents, Report to Congress and the President,'' National Commission to Ensure Consumer Information and Choice in the Airline Industry, November 13, 2002 (''Commission Report''), p 89.

agency small businesses, they nevertheless illustrate general trends affecting these entities.

As can be seen in Tables 2.2.3.b and 2.2.3.c, the number of travel agencies whose sales are less than $5 million per year declined steadily through 2001. Correspondingly, the share of industry sales by these smaller firms also fell. At the same time, however, the largest firms increased both their share of industry sales and the dollar value of their sales.

TABLE 2.2.3.b.—NUMBER OF TRAVEL AGENCIES BY SIZE CATEGORY [30]

Agency Size	1995	1997	1999	2001
$2M or Less	19,851	19,226	17,855	15,253
$2M–$5M	2,356	2,803	2,482	1,770
$5M–$50M	1,059	1,2177	1,236	1,1015
Greater than $50M	77	107	117	117
Total	23,343	23,413	21,690	18,425

TABLE 2.2.3.c.—SHARE OF TRAVEL AGENT SALES BY SIZE CATEGORY [31]

Agency Size	1995	1997	1999	2001
$2M or Less	25.3%	20.6%	16.9%	14.2%
$2M–$5M	13.5	12.8	10.7	8.4
$5M–$50M	24.8	24.5	22.5	20.1
Greater than $50M	36.4	42.1	49.9	57.2

Table 2.2.3.d shows aggregate monthly statistics released by the Airlines Reporting Corporation indicating that the travel agent industry continued to contract and consolidate through 2005. Corresponding revenue data, however, was not available.

TABLE 2.2.3.d.—TRAVEL AGENCIES ACCREDITED BY THE AIRLINES REPORTING CORPORATION [32]

	2001	2002	2003	2004	2005
Retail Locations	27,633	24,679	22,244	20,729	19,871
Home Offices	1,651	1,368	1,203	1,118	1,041
Independent/Single Entities	15,057	13,206	11,670	10,578	9,874
Branch	6,696	6,171	5,695	5,474	5,451
Restricted Access	862	950	1,039	1,120	1,205
On-site branch	3,367	2,984	2,637	2,439	2,300
Satellite Ticket Providers	6,347	4,693	3,204	2,413	1,975
Corporate Travel Departments	108	150	172	182	197
Total Locations	34,088	29,522	25,620	23,324	22,043
Change over previous year	N/A	13.39%	13.22%	8.96%	−5.49%
Total Entities *	17,678	15,674	14,084	12,998	12,317
Change over previous year	N/A	11.34%	10.14%	7.71%	−5.24%

* Sum of Home Offices, Independent/Single Entities, Restricted Access, and Corporate Travel Departments.

2.2.4 Estimated Impact to Travel Agency Small Businesses

While not directly regulated, small travel agencies will certainly be affected by the implementation of Secure Flight. TSA anticipated the most significant burden on these entities would result from the increased time to collect additional passenger information. Small travel agencies may also incur incremental costs due to retraining of staff and reaching out to clients in order to update customer profiles prior to their next trip.

In Section 1.6.4 of the regulatory evaluation, TSA estimated a cost that would be borne by non-Internet (brick-and-mortar) travel agencies as a result of the proposed requirements. Detailed industry data did not exist, however, that would allow TSA to determine the portion of that cost that would be borne by small travel agencies. In lieu of such information, TSA chose to calculate a minimum number of airline reservations the smallest travel agency size category would have to process in order for the requirements of the proposed rule to result in a ''significant economic impact.'' This calculation corresponds to the high estimate scenario and depends on a number of assumptions:

1. The average hourly wage of small business travel agents is $20.69 (including benefits).

2. In TSA's highest cost scenario, an additional 30 seconds per airline reservation would be needed to collect additional passenger information.

3. The additional time to collect passenger information would be incurred for every airline reservation booked through a travel agency.

[30] Commission Report, p. 114.

[31] Ibid.

[32] ''End of Year Reporting and Settlement Results,'' Airlines Reporting Corporation press release, December 2002, December 2003, December 2004, December 2005. Available at *http://www.arccorp.com/regist/news_sales_doc_stats.jsp*. Accessed May 12, 2006.

4. The average revenue of the smallest travel agency firms (revenues between $0 and $99,999) is $47,204.[33]

5. Two percent of a small travel agency's revenue constitutes a ''significant economic impact.''

Accepting these assumptions, 2% of the smallest firm revenue would constitute an impact of $942 ($47,204 × 0.02). Reversing the calculations used in Section 1.6.4, this total must be converted into the additional reservation time it represents. This is accomplished by dividing $942 by the travel agent hourly wage, which yields 45.5 hours ($942 ÷ $20.69/hour). This cumulative 45.5 hours can then be broken down into individual reservations by dividing by the total incremental time per reservation, which is 0.008 hours (30 incremental seconds ÷ 3600 seconds/hour). Thus, 45.5 hours represent approximately 5,690 airline reservations (45.5 hours ÷ 0.008 hours/reservation). Under the most burdensome scenario, then, on average the smallest travel agencies would need to book 5,690 airline reservations in a year in order to potentially incur a significant economic impact as a result of the proposed rule.

Table 2.2.4.a presents this threshold number of reservations for the range of data collection times presented in the Secure Flight regulatory evaluation. Alternatively, the table also presents the number of airline reservations a travel agency would have to process to meet 2% of the SBA small business threshold for travel agents.

TSA has included these estimates and identified their accompanying assumptions in order to enable small travel agencies to provide comments to TSA on whether the proposed Secure Flight requirements would constitute a significant economic impact. These estimates below should be considered as a range of ''worst case scenarios.'' For example, reservations made for clients for whom a travel agency already has the requested Secure Flight information saved in a profile would not incur the additional data collection time.

TABLE 2.2.4.a.—AIRLINE RESERVATIONS THRESHOLD FOR SMALL BUSINESS TRAVEL AGENCIES

	Revenue class $0–$99,999			SBA Small business threshold		
Firm Revenue (A)	$47,120			$3,500,000		
2% of Revenue (B)	$942			$70,000		
Average Agent Hourly Wage (C)	$20.69			$20.69		
Total Incremental Hours (D) = B/C	45.5			3,383.5		
Estimate Scenario	High	Primary	Low	High	Primary	Low
Additional Hours per Reservation (E)	0.008 (30 sec.)	0.006 (20 sec.)	0.003 (10 sec.)	0.008 (30 sec.)	0.006 (20 sec.)	0.003 (10 sec.)
Reservations (F) = D/E	5,690	7,580	15,170	422,900	563,900	1,127,800

Section 3: Significant Alternatives Considered

The proposed rule provides small business carriers the flexibility of either reprogramming their reservation systems to interface directly with the Secure Flight system or to transmit passenger and non-traveler information to Secure Flight through a secure Internet interface. Thus, small business carriers identified in Groups 2 and 3 would have the option of joining Group 4 and using the Internet portal if they determined reprogramming their systems to communicate directly with Secure Flight would be too costly. Similarly, small business carriers TSA has identified in this analysis as scheduled to use the Secure Flight Internet portal would have the option to reprogram their systems to communicate directly with Secure Flight if they determined using the portal would be too burdensome on their business processes.

While either method would impose some costs on small businesses, TSA determined that exempting these carriers from the requirements of the proposed rule would fail to meet the mandate within the IRTPA that TSA assume the watch list matching function. Taking this into consideration, TSA determined the options described above would effectively minimize the impact to small businesses. TSA welcomes comments on these options and analyses as well as suggestions that may further reduce the impact on covered small businesses while achieving the heightened security objective of the proposed rule.

Section 4: Identification of Duplicative or Overlapping Federal Rules

TSA is aware that other Federal agencies, such as the Centers for Disease Control and Prevention (CDC) and Customs and Border Protection (CBP), collect data concerning aviation passengers and may conduct or will conduct watch list matching for these passengers. TSA is working with other agencies, including the CDC and CBP, to develop ways to eliminate unnecessary duplication of comparable screening efforts and thereby reduce governmental and private sector costs. Therefore, the proposed rule allows TSA to relieve covered aircraft operators of the requirement to transmit passenger information if TSA determines that the U.S. government is conducting watch list matching for a passenger on a particular flight that is comparable to the screening conducted pursuant to proposed part 1560. TSA will work with each covered aircraft operator to establish the specific procedures and times for these transmissions as it develops its Aircraft Operator Implementation Plan.

Section 5: Initial Determination of No Significant Impact

Based on the considerations above, TSA believes that it is unlikely the proposed rule would have a significant economic impact on a substantial number of the small entities subject to this rulemaking. However, TSA withholds final determination until receiving public comment and completing a Final Regulatory Flexibility Analysis (FRFA). In conducting this analysis, TSA acknowledges that the ability of carriers to share the incidence of security costs with their customers has been limited. TSA solicits comment on its analysis.

While not required by the RFA, TSA has also considered the potential impact to small business travel agencies, as these entities would likely be indirectly impacted by the proposed rule given

[33] Small Business Administration. Table: ''All Industries by NAICS codes, 2003.'' See TXT file ''2003'' available at *http://www.sba.gov/advo/research/data.html.* Accessed May 6, 2006. Estimated receipts divided by number of firms, revenue class 0–99,999.

their role in the airline reservation process. TSA was unable to determine if the proposed rule would have a significant economic impact on a substantial number of these small business travel agencies. TSA welcomes comments from the industry and other interested parties that will assist the agency in improving its assumptions and estimates.

4. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as security, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general benefits and desirability of free trade, it is the policy of TSA to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the U.S.

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is TSA's policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. TSA has determined that there are no ICAO Standards and Recommended Practices that correspond to the regulatory standards established by this notice of proposed rulemaking (NPRM). TSA has assessed the potential effect of this NPRM and has determined that it is unlikely it would create barriers to international trade.

However, when TSA reviewed the impact of foreign carrier overflights, the conclusion is not clear. The right of airlines from one country to overfly another country in the course of traveling to the destination country is the first of the well known ''freedoms of the air.'' This technical freedom has been engrained in international aviation since the Chicago Convention of 1944. How countries might react to the new conditions being placed on the fulfillment of this freedom is uncertain. International trade in travel and international shipping may be negatively impacted should foreign countries choose to respond in a retaliatory manner. One response by foreign carriers might be to avoid overflying the U.S. entirely, thereby lengthening flight routes and the costs of operation to those carriers. These reroutings would change airline costs and thus contribute to fare increases, which would affect trade between the departure and arrival countries, even though it would not directly affect trade involving the U.S. If the foreign carrier response is to reroute, it is not clear that such a change would eliminate all risks, since aircraft skirting the boundaries of U.S. airspace could be redirected into U.S. airspace by hijackers or terrorists.

5. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. This proposed rulemaking would not impose an unfunded mandate on State, local, or tribal governments, but it would impose an unfunded mandate on the private sector. The analysis required under Title II of the Act is satisfied with the full Regulatory Impact Assessment in the docket.

C. Executive Order 13132, Federalism

TSA has analyzed this notice of proposed rulemaking under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

D. Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

E. Energy Impact Analysis

TSA has assessed the energy impact of the action in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects

49 CFR Part 1540

Air carriers, Aircraft, Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1544

Air carriers, Aircraft, Airmen, Airports, Arms and munitions, Aviation safety, Explosives, Freight forwarders, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1560

Air carriers, Aircraft, Reporting and recordkeeping requirements, Security measures.

The Proposed Amendments

For the reasons set forth in the preamble, the Transportation Security Administration proposes to amend Chapter XII of Title 49, Code of Federal Regulations, as follows:

SUBCHAPTER C—CIVIL AVIATION SECURITY

PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES

1. The authority citation for part 1540 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

2. Revise § 1540.107 to read as follows:

Subpart B—Responsibilities of Passengers and Other Individuals and Persons

* * * * *

§ 1540.107 Submission to screening and inspection.

(a) No individual may enter a sterile area or board an aircraft without submitting to the screening and inspection of his or her person and accessible property in accordance with the procedures being applied to control access to that area or aircraft under this subchapter.

(b) An individual must provide his or her full name, as defined in § 1560.3 of this chapter, when—

(1) The individual makes a reservation for a covered flight, as defined in § 1560.3 of this chapter, or

(2) The individual makes a request for authorization to enter a sterile area.

(c) An individual may not enter a sterile area or board an aircraft if the

individual does not present a verifying identity document as defined in § 1560.3 of this chapter, when requested for purposes of watch list matching under § 1560.105(c) of this chapter, unless otherwise authorized by TSA on a case-by-case basis.

PART 1544—AIRCRAFT OPERATOR SECURITY: AIR CARRIERS AND COMMERCIAL OPERATORS

3. The authority citation for part 1544 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44918, 44932, 44935–44936, 44942, 46105.

4. Amend § 1544.103 by adding new paragraph (c)(22) to read as follows:

§ 1544.103 Form, content, and availability.

* * * * *

(c) * * *

(22) The Aircraft Operator Implementation Plan (AOIP) as required under 49 CFR 1560.109.

5. Add a new part 1560, to read as follows:

PART 1560—SECURE FLIGHT PROGRAM

Subpart A—General

Sec.
1560.1 Scope, purpose, and implementation.
1560.3 Terms used in this part.

Subpart B—Collection and Transmission of Secure Flight Passenger Data for Watch List Matching

1560.101 Request for and transmission of information to TSA.
1560.103 Notice.
1560.105 Denial of transport or sterile area access; Designation for enhanced screening.
1560.107 Use of watch list matching results by covered aircraft operators.
1560.109 Aircraft Operator Implementation Plan.
1560.111 Covered airport operators.

Subpart C—Passenger Redress

1560.201 Applicability.
1560.203 Representation by counsel.
1560.205 Redress process.
1560.207 Oversight of process.

Authority: 49 U.S.C. 114, 40113, 44901, 44902, 44903.

Subpart A—General

§ 1560.1 Scope, purpose, and implementation.

(a) *Scope.* This part applies to the following:

(1) Aircraft operators required to adopt a security program for a full program operation under 49 CFR 1544.101(a);

(2) Foreign air carriers required to adopt a security program under 49 CFR 1546.101(a) or (b); and

(3) Airport operators that seek to authorize individuals to enter a sterile area for purposes approved by TSA.

(b) *Purpose.* The purpose of this part is to enhance the security of air travel within the United States and support the Federal Government's counterterrorism efforts by assisting in the detection of individuals identified on Federal Government watch lists who seek to travel by air, and to facilitate the secure travel of the public. This part enables TSA to operate a watch list matching program known as Secure Flight, which involves the comparison of passenger and non-traveler information with the identifying information of individuals on Federal Government watch lists.

(c) *Implementation.* Each covered aircraft operator must begin requesting the information described in § 1560.101(a)(1) and have the capability to transmit Secure Flight Passenger Data to TSA 60 days after the effective date of this rule. Each covered aircraft operator must begin transmitting information to TSA as required in § 1560.101(b) on the date specified in, and in accordance with, its Aircraft Operator Implementation Plan. TSA will inform each covered aircraft operator 60 days prior to the date on which TSA will assume the watch list matching function from that aircraft operator.

§ 1560.3 Terms used in this part.

In addition to the terms in §§ 1500.3 and 1540.5 of this chapter, the following terms apply to this part:

Aircraft Operator Implementation Plan or *AOIP* means a written procedure describing how and when a covered aircraft operator or airport operator transmits passenger and flight information and non-traveler information to TSA, as well as other related matters.

Airport code means the official code, designated by the International Air Transport Association (IATA), for an airport.

Consolidated User Guide means a document developed by the Department of Homeland Security (DHS) to provide guidance to aircraft operators that must transmit passenger information to one or more components of DHS on operational processing and transmission of passenger information to all required components in a unified manner.

Covered aircraft operator means each aircraft operator required to carry out a full program under 49 CFR 1544.101(a) or a security program under 49 CFR 1546.101(a) or (b).

Covered airport operator means each airport operator that seeks to authorize non-traveling individuals to enter a sterile area for a purpose permitted by TSA.

Covered flight means any operation of an aircraft operator that is subject to or operates under a full program under 49 CFR 1544.101(a). *Covered flight* also means any operation of an aircraft that is subject to or operates under a security program under 49 CFR 1546.101(a) or (b) arriving in or departing from the United States, or overflying the continental United States. *Covered flight* does not include any flight for which TSA has determined that the Federal Government is conducting passenger matching comparable to the matching conducted pursuant to this part.

Date of birth means the day, month, and year of an individual's birth.

Department of Homeland Security Traveler Redress Inquiry Program or *DHS TRIP* means the voluntary program through which individuals may request redress if they believe they have been: (1) Denied or delayed boarding transportation due to DHS screening programs; (2) denied or delayed entry into or departure from the United States at a port of entry; or (3) identified for additional (secondary) screening at U.S. transportation facilities, including airports, and seaports.

Full name means an individual's full name as it appears on a verifying identity document held by the individual.

Inhibited status means the status of a passenger or non-traveling individual to whom TSA has instructed a covered aircraft operator or a covered airport operator not to issue a boarding pass or to provide access to the sterile area.

Itinerary information means information reflecting a passenger's or non-traveling individual's itinerary specified in the covered aircraft operator's AOIP. For non-traveling individuals, itinerary information is the airport code for the sterile area to which the non-traveler seeks access. For passengers, itinerary information includes the following:

(1) Departure airport code.
(2) Aircraft operator.
(3) Departure date.
(4) Departure time.
(5) Arrival date.
(6) Scheduled arrival time.
(7) Arrival airport code.
(8) Flight number.
(9) Operating carrier (if available).

Known traveler number means a unique number assigned to individuals for whom the Federal Government has

conducted a security threat assessment and determined do not pose a security threat.

Non-traveling individual or *non-traveler* means an individual to whom a covered aircraft operator or covered airport operator seeks to issue an authorization to enter the sterile area of an airport in order to escort a minor or a passenger with disabilities or for some other purpose permitted by TSA. The term *non-traveling individual* or *non-traveler* does not include employees or agents of airport or aircraft operators or other individuals whose access to a sterile area is governed by another TSA regulation or security directive.

Overflying the continental United States means departing from an airport or location outside the United States and transiting the airspace of the continental United States en route to another airport or location outside the United States. Airspace of the continental United States includes the airspace over the continental United States and the airspace overlying the territorial waters between the continental U.S. coast and 12 nautical miles from the continental U.S. coast. *Overflying the continental United States* does not apply to:

(1) Flights that transit the airspace of the continental United States between two airports or locations in the same country, where that country is Canada or Mexico; or

(2) Any other category of flights that the Assistant Secretary of Homeland Security (Transportation Security Administration) designates in writing.

Passenger means an individual who has, or seeks to obtain, a reservation for transport on a covered flight. The term *passenger* does not include:

(1) A crew member traveling on duty; or

(2) An individual with flight deck privileges under 49 CFR 1544.237 traveling on the flight deck.

Passenger Resolution Information or *PRI* means the information that a covered aircraft operator or covered airport operator transmits to TSA for an individual who TSA places in an inhibited status and from whom the covered aircraft operator or covered airport operator is required to request additional information and a Verifying Identity Document. *Passenger Resolution Information* includes, but is not limited to, the following:

(1) Covered aircraft operator's agent identification number or agent sign.

(2) Type of Verifying Identity Document presented by the passenger.

(3) The identification number on the Verifying Identity Document.

(4) Issue date of the Verifying Identity Document.

(5) Name of the governmental authority that issued the Verifying Identity Document.

(6) Physical attributes of the passenger such as height, eye color, or scars, if requested by TSA.

Passport information means the following information from an individual's passport:

(1) Passport number.

(2) Country of issuance.

(3) Expiration date.

(4) Gender.

(5) Full name.

Redress Number means the number assigned by DHS to an individual processed through the redress procedures described in 49 CFR part 1560, subpart C.

Secure Flight Passenger Data (SFPD). For purposes of this proposed rule, ''Secure Flight Passenger Data'' or ''SFPD'' is information regarding a passenger or non-traveling individual that a covered aircraft operator or covered airport operator transmits to TSA, to the extent available, pursuant to § 1560.101. SFPD is the following information regarding a passenger or non-traveling individual:

(1) Full name.

(2) Date of birth.

(3) Gender.

(4) Redress number or known traveler number (once implemented).

(5) Passport information.

(6) Reservation control number.

(7) Record sequence number.

(8) Record type.

(9) Passenger update indicator.

(10) Traveler reference number.

(11) Itinerary information.

Self-service kiosk means a kiosk operated by a covered aircraft operator that is capable of accepting a passenger reservation or a request for authorization to enter a sterile area from a non-traveling individual.

Sterile area means ''sterile area'' as defined in 49 CFR 1540.5.

Terrorist Screening Center or TSC means the entity established by the Attorney General to carry out Homeland Security Presidential Directive 6 (HSPD–6), dated September 16, 2003, to consolidate the Federal Government's approach to terrorism screening and provide for the appropriate and lawful use of terrorist information in screening processes.

Verifying Identity Document means an unexpired passport issued by a foreign government or an unexpired document issued by a government (Federal, State, or tribal) that includes the following information for the individual:

(1) Full name.

(2) Date of birth.

(3) Photograph of the individual.

Watch list refers to the No Fly and Selectee List components of the Terrorist Screening Database maintained by the Terrorist Screening Center. For certain flights, the ''watch list'' may include the larger set of watch lists maintained by the federal government as warranted by security considerations.

Subpart B—Collection and Transmission of Secure Flight Passenger Data for Watch List Matching

§ 1560.101 Request for and transmission of information to TSA.

(a) *Request for information.* (1) Each covered aircraft operator must request the full name, gender, date of birth, and Redress Number for passengers on a covered flight and non-traveling individuals seeking access to an airport sterile area. The covered aircraft operator must include the information provided by the passenger in response to this request in the Secure Flight Passenger Data.

(i) Except as provided in paragraph (a)(1)(ii) of this section, each covered aircraft operator must begin requesting the information described in paragraph (a)(1) of this section 60 days after the effective date of this rule.

(ii) An aircraft operator that becomes a covered aircraft operator after the effective date must begin requesting the information on the date it becomes a covered aircraft operator.

(2) Beginning on a date no later than 30 days after being notified in writing by TSA, each covered aircraft operator must additionally request the known traveler number for passengers on a covered flight and non-traveling individuals seeking access to an airport sterile area. The covered aircraft operator must include the known traveler number provided by the passenger in response to this request in the SFPD.

(3) Each covered aircraft operator may not accept a reservation for any passenger on a covered flight who does not provide a full name. Each covered aircraft operator may not accept a request for authorization to enter a sterile area from a non-traveling individual who does not provide a full name.

(4) Each covered aircraft operator must ensure that each third party that accepts a reservation, or accepts a request for authorization to enter a sterile area, on the covered aircraft operator's behalf complies with the requirements of this section.

(b) *Transmission of Secure Flight Passenger Data to TSA.* Beginning on

the date provided in a covered aircraft operator's AOIP, the covered aircraft operator must electronically transmit Secure Flight Passenger Data (SFPD) to TSA, prior to the scheduled departure of each covered flight, in accordance with the AOIP.

(1) To the extent available, each covered aircraft operator must electronically transmit SFPD to TSA for each passenger on a covered flight.

(2) Each covered aircraft operator must transmit SFPD to TSA prior to the scheduled flight departure time, in accordance with the covered aircraft operator's AOIP.

(c) *Transmission of non-traveler information to TSA.* Beginning on the date provided in a covered aircraft operator's AOIP, the covered aircraft operator must electronically transmit SFPD to TSA for each non-traveling individual, prior to authorizing access to an airport sterile area.

(d) *Retransmission of information.* Each covered aircraft operator must retransmit to TSA updates to the information listed in paragraphs (b) and (c) of this section to reflect most recent changes to that information, as specified in the covered aircraft operator's AOIP.

§ 1560.103 Notice.

(a) *Electronic collection of information.* (1) *Current electronic collection of information.* Prior to collecting information through a Web site or self-service kiosk from a passenger or non-traveling individual to comply with § 1560.101(a), a covered aircraft operator must make available the complete privacy notice set forth in paragraph (b) of this section.

(2) *Other electronic collection of information.* If a covered aircraft operator collects information directly from a passenger or non-traveling individual to comply with § 1560.101(a) through an electronic means not described in paragraph (a)(1) of this section, the covered aircraft operator must make available the complete privacy notice set forth in paragraph (b) of this section.

(b) *Privacy notice.* The covered aircraft operator may substitute its name for the word ''us,'' but the complete privacy notice otherwise must be identical to the following paragraph unless TSA has approved alternative language:

The Transportation Security Administration requires us to collect information from you for purposes of watch list screening, under the authority of 49 U.S.C. section 114, and the Intelligence Reform and Terrorism Prevention Act of 2004. Providing this information is voluntary; however, if it is not provided, you may be subject to additional screening or denied transport or authorization to enter a sterile area. TSA may share information you provide with law enforcement or intelligence agencies or others under its published system of records notice. For more on TSA Privacy policies or to view the system of records notice and the privacy impact assessment, please see TSA's Web site at *www.tsa.gov.*

§ 1560.105 Denial of transport or sterile area access; designation for enhanced screening.

(a) *Applicability.* (1) This section applies to a covered aircraft operator beginning on the date that TSA assumes the watch list matching function for the passengers and non-traveling individuals to whom that covered aircraft operator issues a boarding pass or other authorization to enter a sterile area. TSA will provide prior written notification to the covered aircraft operator no later than 60 days before the date on which it will assume the watch list matching function from that covered aircraft operator.

(2) Prior to the date that TSA assumes the watch list matching function from a covered aircraft operator, the covered aircraft operator must comply with existing watch list matching procedures for passengers and non-traveling individuals, including denial of transport or sterile area access or designation for enhanced screening for individuals identified by the covered aircraft operator or TSA.

(b) *Watch list matching results.* A covered aircraft operator must not issue a boarding pass or other authorization to enter a sterile area to a passenger or a non-traveling individual and must not allow that individual to board an aircraft or enter a sterile area, until TSA informs the covered aircraft operator of the results of watch list matching for that passenger or non-traveling individual, in response to the covered aircraft operator's most recent SFPD submission for that passenger or non-traveling individual.

(1) *Denial of boarding pass.* If TSA sends a covered aircraft operator an instruction that the passenger or non-traveling individual must be placed on inhibited status, the covered aircraft operator must not issue a boarding pass or other authorization to enter a sterile area to that individual and must not allow that individual to board an aircraft or enter a sterile area.

(2) *Selection for enhanced screening.* If TSA sends a covered aircraft operator an instruction that the passenger or non-traveling individual has been selected for enhanced screening at a security checkpoint, the covered aircraft operator may issue a boarding pass or other authorization to enter a sterile area to that individual and must identify the individual for enhanced screening, in accordance with procedures approved by TSA. The covered aircraft operator must place a separate code on the boarding pass that meets the requirements described in the Consolidated User Guide.

(3) *Cleared for boarding or entry into a sterile area.* If TSA sends a covered aircraft operator an instruction that a passenger or non-traveling individual is cleared, the covered aircraft operator may issue a boarding pass or other authorization to enter a sterile area to that individual, unless required under another TSA requirement to identify the passenger or non-traveling individual for enhanced screening. The covered aircraft operator must place a separate code on the boarding pass that meets the requirements described in the Consolidated User Guide.

(4) *Override by a covered aircraft operator.* No covered aircraft operator may override a TSA instruction to place a passenger or non-traveling individual in an inhibited status or to identify a passenger or non-traveling individual for enhanced screening, unless explicitly authorized by TSA to do so.

(5) *Updated SFPD from covered aircraft operator.* When a covered aircraft operator sends an updated SFPD to TSA under § 1560.101(d) for a passenger or non-traveling individual for whom TSA has already issued an instruction, all previous TSA instructions concerning the passenger or non-traveling individual are voided. The covered aircraft operator may not issue a boarding pass or grant authorization to enter a sterile area until it receives an updated instruction from TSA authorizing the issuance of a boarding pass or authorization to enter a sterile area. Upon receiving an updated instruction from TSA, the covered aircraft operator must acknowledge receipt of the updated instruction, comply with the updated instruction, and disregard all previous instructions.

(6) *Updated instruction from TSA.* After TSA sends a covered aircraft operator an instruction under paragraph (b)(1), (b)(2), or (b)(3) of this section, TSA may receive additional information concerning the passenger and may send an updated instruction concerning that passenger to the covered aircraft operator. Upon receiving an updated instruction from TSA, the covered aircraft operator must acknowledge receipt of the updated instruction, comply with the updated instruction, and disregard all previous instructions.

(c) *Request for identification.* (1) *In general.* If TSA has not informed the

covered aircraft operator of the results of watch list matching for an individual by the time the individual attempts to check in, or informs the covered aircraft operator that an individual has been placed in inhibited status, the aircraft operator must request from the individual a verifying identity document.

(2) *Transmission of Updated Secure Flight Passenger Data.* Upon reviewing a passenger's verifying identity document, the covered aircraft operator must transmit the SFPD elements from the individual's verifying identity document to TSA.

(3) *Provision of Passenger Resolution Information.* If requested by TSA, the covered aircraft operator must also provide to TSA the individual's Passenger Resolution Information as specified by TSA.

(4) *Exception for minors.* If a covered aircraft operator is required to obtain information from an individual's verifying identity document under this paragraph (c), and the individual is younger than 18 years of age and does not have a verifying identity document, TSA may, on a case-by-case basis, authorize the minor or an adult accompanying the minor to state the individual's full name and date of birth in lieu of providing a verifying identity document.

(d) *Failure to obtain identification.* If a passenger or non-traveling individual does not present a verifying identity document when requested by the covered aircraft operator, in order to comply with paragraph (c) of this section, the covered aircraft operator must not issue a boarding pass or give authorization to enter a sterile area to that individual and must not allow that individual to board an aircraft or enter a sterile area, unless otherwise authorized by TSA.

§ 1560.107 Use of watch list matching results by covered aircraft operators.

A covered aircraft operator must not use any watch list matching results provided by TSA for purposes other than those provided in § 1560.105 and security purposes.

§ 1560.109 Aircraft Operator Implementation Plan.

(a) *Content of the Aircraft Operator Implementation Plan (AOIP).* Each covered aircraft operator must adopt and carry out an AOIP that sets forth the specific means by which the covered aircraft operator will request and transmit information under § 1560.101, the timing and frequency of transmission, and any other related matters, in accordance with the Consolidated User Guide.

(b) *Submission of Aircraft Operator Implementation Plan (AOIP).* Each covered aircraft operator must submit a proposed AOIP to TSA for approval.

(1) Aircraft operators that are covered aircraft operators on the effective date of this rule must submit their proposed AOIP no later than 30 days after the effective date. Review, modification, and approval of proposed AOIPs will be conducted under paragraphs (b) and (c) of this section.

(2) An aircraft operator that becomes a covered aircraft operator after the effective date must submit a proposed AOIP as part of its proposed security program under 49 CFR 1544.105(a) or 49 CFR 1546.105(a). Review, modification, and approval of the proposed AOIP will be conducted under the procedures set forth in 49 CFR 1544.105 or 1546.105, as appropriate, rather than paragraphs (b) and (c) of this section.

(c) *Approval and implementation of Aircraft Operator Implementation Plan (AOIP).* If TSA approves a covered aircraft operator's proposed AOIP, the covered aircraft operator must implement the plan according to the schedule set forth in the AOIP and approved by TSA.

(d) *Disapproval and modification of Aircraft Operator Implementation Plan (AOIP).* (1) If TSA disapproves and orders modifications to a proposed AOIP submitted under paragraph (a)(1) of this section, TSA will provide written notice to the covered aircraft operator. The covered aircraft operator must either:

(i) Make any changes to the AOIP that TSA requests in the notice and implement the plan according to the schedule approved by TSA and set forth in the AOIP; or

(ii) Petition TSA to reconsider the modification(s) in the notice within 30 days of receiving the notice. A petition for reconsideration with supporting documentation must be filed with the designated official.

(2) The designated official, upon receipt of a petition for reconsideration and supporting documentation, may amend or withdraw the notice to modify, or transmit the petition, together with any pertinent information and supporting documentation, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the designated official to withdraw or amend the notice, or by affirming the notice to modify.

(3) TSA may, at its discretion, grant extensions to any schedule deadlines, on its own initiative or upon the request of a covered aircraft operator.

(e) *Incorporation Into Security Program.* Once an AOIP is approved, the AOIP becomes part of the covered aircraft operator's security program as described in 49 CFR part 1544, subpart B, or 49 CFR part 1546, subpart B, as appropriate, and any amendments will be made in accordance with the procedures in those subparts.

(f) *Handling of Aircraft Operator Implementation Plan (AOIP).* An AOIP contains sensitive security information (SSI) and must be handled and protected in accordance with 49 CFR part 1520.

§ 1560.111 Covered airport operators.

(a) *Applicability.* This section applies to a covered airport operator that has a program approved by TSA through which the covered airport operator may authorize non-traveling individuals to enter a sterile area.

(b) *Requirements.* No later than 30 days after receiving written notice from TSA, or such longer period as TSA may determine for good cause, a covered airport operator must adopt and carry out an AOIP in accordance with § 1560.109. Each covered airport operator must comply with the procedures required of covered aircraft operators in §§ 1560.101(a), (c), and (d), 1560.103, and 1560.107 of this part and any other applicable TSA requirements when authorizing non-traveling individuals to enter a sterile area.

Subpart C—Passenger Redress

§ 1560.201 Applicability.

This subpart applies to individuals who believe they have been improperly or unfairly delayed or prohibited from boarding an aircraft or entering a sterile area, as a result of the Secure Flight program.

§ 1560.203 Representation by counsel.

A person may be represented by counsel at his or her own expense during the redress process.

§ 1560.205 Redress process.

(a) If an individual believes he or she has been improperly or unfairly delayed or prohibited from boarding an aircraft or entering a sterile area as a result of the Secure Flight program, the individual may seek assistance through the redress process established under this section.

(b) An individual may obtain the forms and information necessary to initiate the redress process on the DHS TRIP Web site at *http://www.dhs.gov/trip* or by contacting the DHS TRIP office by mail. Written requests may be

sent to the DHS TRIP office and must include the individual's name and current address. DHS will provide the necessary documents and information to individuals through its Web site or by mail.

(c) The individual must send to the DHS TRIP office the personal information and copies of the specified identification documents. If TSA needs additional information in order to continue the redress process, TSA will so notify the individual in writing and request that additional information. The DHS TRIP office will assign the passenger a unique identifier, which TSA will recognize as the Redress Number, and the passenger may use that Redress Number in future correspondence with TSA and when making future travel reservations.

(d) TSA, in coordination with the TSC and other appropriate Federal law enforcement or intelligence agencies, if necessary, will review all the documentation and information requested from the individual, correct any erroneous information, and provide the individual with a timely written response.

§ 1560.207 Oversight of process.

The redress process and its implementation are subject to review by the Offices of the TSA and DHS Privacy Officers and the TSA and DHS Offices for Civil Rights and Civil Liberties.

Issued in Arlington, Virginia, on August 8, 2007.

Kip Hawley,

Assistant Secretary.

[FR Doc. E7–15960 Filed 8–22–07; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2007–28972]

RIN 1652–ZA14

Privacy Act of 1974: System of Records; Secure Flight Records

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice to establish system of records; request for comments.

SUMMARY: The Transportation Security Administration (TSA) is establishing one new system of records, DHS/TSA 019, under the Privacy Act of 1974, known as ''Secure Flight Records,'' for a passenger screening program known as Secure Flight. The Secure Flight program implements a mandate of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (Pub. L. 108–458, 118 Stat. 3638, Dec. 17, 2004) and is consistent with TSA's authority under the Aviation and Transportation Security Act (ATSA). Section 4012(a)(1) of the IRTPA requires TSA to assume from air carriers the comparison of passenger information for domestic flights to the consolidated and integrated terrorist watch list maintained by the Federal Government. Further, section 4012(a)(2) of IRTPA similarly requires the DHS to compare passenger information for international flights to and from the United States against the consolidated and integrated terrorist watch list before departure of such flights.

DATES: Comments are due September 24, 2007.

ADDRESSES: You may submit comments, identified by the TSA docket number, to this rulemaking using any one of the following methods:

Comments Filed Electronically: You may submit comments through the docket Web site at *http://dms.dot.gov.* You also may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov.*

Comments Submitted by Mail, Fax, or In Person: Address or deliver your written, signed comments to the Docket Management System at U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; Fax: 202–493–2251. See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Peter Pietra, Director, Privacy Policy and Compliance, TSA–36, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; e-mail: *TSAPrivacy@dhs.gov;* Hugo Teufel III, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528; e-mail: *pia@dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA invites interested persons to participate by submitting written comments, data, or views relating to this notice and the routine uses established for the Secure Flight Records system. See **ADDRESSES** above for information on where to submit comments.

With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. The most helpful comments reference a specific portion of the notice, explain the reason for any recommended change, and include supporting data if necessary and available. You may submit comments and material electronically, in-person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file in the public docket all comments received by TSA, except for comments containing confidential information and Sensitive Security Information.[1] TSA will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and SSI Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the notice. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address specified in the **FOR FURTHER INFORMATION CONTACT** section.

Upon receipt of comments with SSI, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold them in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS) FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, or advocacy group, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

You may review the comments in the public docket in person by visiting the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located in the West Building Ground Floor, Room W12–140 at the Department of Transportation address, previously provided under **ADDRESSES**. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

Availability of Notice

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Security Regulations web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

In addition, copies are available by writing or emailing the TSA Privacy Office in the **FOR FURTHER INFORMATION**

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

CONTACT section. Make sure to identify the docket number of this document.

Background

The Privacy Act of 1974 embodies fair information principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate personally identifiable information contained in a system of records. The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses of the information contained in each system in order to make agency record-keeping practices transparent, to notify individuals regarding the uses to which individually identifiable information is put, and to assist the individual to more easily find such files within the agency. This **Federal Register** notice establishes a new system of records known as ''Secure Flight Records'' (DHS/TSA 019) in support of the Secure Flight program.

The Secure Flight program is based on a mandate from Congress under sections 4012(a)(1) and (2) of IRTPA that TSA and DHS assume from aircraft operators the comparison of passenger information to the consolidated and integrated terrorist watch list maintained by the Federal Government. In order to carry out this mandate, TSA intends to begin implementation of the Secure Flight program. Also in today's **Federal Register**, TSA is publishing a Notice of Proposed Rulemaking (NPRM) that would require certain U.S. aircraft operators and foreign air carriers to provide passenger information to TSA for the purpose of passenger watch list matching against the No Fly and Selectee list components of the consolidated and integrated terrorist watch list known as the Terrorist Screening Database (TSDB) maintained by the Terrorist Screening Center (TSC).[2] Further, as recommended by the 9/11 Commission, TSA may access the ''larger set of watch lists maintained by the Federal Government.''[3] Therefore, where warranted by security considerations, TSA may use the full TSDB or other government databases, such as intelligence or law enforcement databases (referred to as ''watch list matching''). For example, TSA may obtain intelligence that flights flying a particular route may be subject to an increased security risk. Under this circumstance, TSA may decide to compare passenger information on some or all of the flights flying that route against the full TSDB or other government database.

Although not required, aircraft operators may voluntarily choose to begin operational testing with TSA prior to publication of a final rule. In the event an aircraft operator begins early operational testing with TSA, the records created as part of that testing will be included in this system of records. During early operational testing, covered aircraft operators may provide watch list matching results conducted by the covered aircraft operators for both domestic and international flights and the passenger data elements outlined in the Secure Flight NPRM.

DHS/TSA 019 will cover certain records TSA creates or receives in the course of operational testing and implementation of the Secure Flight program. Using commercial airline passenger information collected from aircraft operators and foreign air carriers under Secure Flight, TSA, in coordination with the TSC, will compare commercial airline passenger information described below to information about individuals on the No Fly and Selectee list components of the TSDB. In addition, in this watch list matching process, TSA will refer to information generated as a result of the redress process, including information about confirmed, misidentified persons who may previously have been mistaken for individuals on one of the watch lists. Owners or operators of leased or charter aircraft over 12,500 pounds may be permitted to request that TSA screen their passengers, aircraft operators, and lessor(s) through Secure Flight.

Additionally, TSA will apply this screening process to non-traveling individuals who an aircraft or airport operator seeks to authorize to enter an airport sterile area[4] past a security checkpoint for another purpose approved by TSA, such as to escort a minor or a passenger with disabilities.

Information that is maintained in this System of Records may be shared under certain circumstances to confirm watch list matching determinations. This ordinarily will occur when, in an effort to validate a potential match, the Secure Flight program may exchange information with another Federal, state, or local governmental entity, such as Federal, state, or local law enforcement, involved in an operational or informational process associated with watch list matching. Likewise, information may be shared with other Federal agencies where those agencies have information that can be used to distinguish the identity of the individual from that of another individual included on a watch list.

Additionally, certain information may be shared with non-governmental entities where necessary for the sole purpose of effectuating a watch list match determination and the issuance of a boarding pass or gate pass printing instruction to aircraft and/or airport operators.

Other types of information sharing that may result from the routine uses discussed below in this notice include: (1) Disclosure to contractors, grantees, or other individuals who are not DHS employees but have an agency relationship with DHS to accomplish DHS responsibilities; (2) sharing with other Federal, state, local, tribal, foreign or international government agencies and organizations for national security, law enforcement, immigration, or intelligence purposes in response to potential or actual threats to transportation or national security and as necessary to facilitate an operational response to such threats; (3) sharing with Federal, state, local, tribal, foreign or international government agencies and organizations responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order regarding a violation or potential violation of civil or criminal law or regulation; (4) sharing with the National Archives and Records Administration for proper handling of government records; (5) sharing with the U.S. Department of Justice or other Federal agency for purposes of conducting litigation or administrative proceedings in which the Federal government or its employees are a party or have an interest; (6) sharing with appropriate agencies, entities and persons to protect an individual who is the subject of the record from the harm of identity theft in the case of a data breach affecting this system; and (7) sharing with other governmental

[2] The TSC was established by the Attorney General in coordination with the Secretary of State, the Secretary of Homeland Security, the Director of the Central Intelligence Agency, the Secretary of the Treasury, and the Secretary of Defense. The Attorney General, acting through the Director of the Federal Bureau of Investigation (FBI), established the TSC in support of Homeland Security Presidential Directive 6 (HSPD–6), dated September 16, 2003, which required the Attorney General to establish an organization to consolidate the Federal Government's approach to terrorism screening and provide for the appropriate and lawful use of terrorist information in screening processes. The TSC maintains the Federal Government's consolidated and integrated terrorist watch list, known as the TSDB.

[3] *National Commission on Terrorist Attacks Upon the United States,* page 393.

[4] ''Sterile area'' is defined in 49 CFR 1540.5 and generally means an area of an airport with access limited to persons who have undergone security screening by TSA.

agencies or multilateral governmental organizations, such as the World Health Organization, to help those agencies prevent exposure to a communicable or quarantinable disease or other significant health threat, such as transmissible tuberculosis, during aviation travel and prevent further transmission of such diseases as these diseases may pose a threat to transportation and national security if not addressed in a rapid manner. Sharing this information pursuant to this health routine use will assist those agencies in preventing passengers' exposure to communicable diseases during aviation travel and it will help those agencies rapidly notify individuals who may have been exposed to such diseases. This health routine use may reduce or eliminate potential duplicative reporting of passenger information to U.S. authorities for this purpose, thereby reducing the number of times this information must be transmitted to proper authorities.

In the course of carrying out the Secure Flight program, TSA will review information from Federal Bureau of Investigation (FBI) systems of records and from systems of records of other law enforcement and intelligence agencies if necessary to resolve an apparent match to the consolidated and integrated terrorist watch list. These may include classified and unclassified governmental terrorist, law enforcement, and intelligence databases, including databases maintained by the Department of Homeland Security, Department of Defense, National Counterterrorism Center, and FBI. Records from these systems are exempt from certain provisions of the Privacy Act because they contain law enforcement investigative information and intelligence information. To the extent records in the Secure Flight Records system are provided by or obtained from such other exempt systems of records, TSA would rely on the Privacy Act exemptions claimed for those systems. Such records or information may be exempt because they include law enforcement or national security investigation records, intelligence-related records, law enforcement encounter records, or terrorist screening records. These could come from various DHS systems, such as the Treasury Enforcement Communications System (TECS) or from other agency systems. After conferring with the appropriate component or agency, TSA may waive applicable exemptions in appropriate circumstances and where it would not interfere with or adversely affect the law enforcement or national security purposes of the systems from which the information is recompiled or in which it is contained.

System of Records DHS/TSA 019

SYSTEM NAME:

Secure Flight Records

SECURITY CLASSIFICATION:

Unclassified; Sensitive Security Information

SYSTEM LOCATION:

Records are maintained at the Transportation Security Administration, 601 South 12th Street, Arlington, VA, and at other secure TSA facilities in Annapolis Junction, Maryland and Colorado Springs, Colorado. Records also may be maintained at the secured facilities of contractors or other parties that perform functions under the Secure Flight program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who attempt to make reservations for travel on, have traveled on, or have reservations to travel on, a flight operated by a U.S. aircraft operator or a flight into, out of, or overflying the United States that is operated by a foreign air carrier;

(b) Non-traveling individuals who seek to obtain authorization from an aircraft or airport operator to enter the sterile area of an airport;

(c) For flights that TSA grants a request by the operators of leased or charter aircraft over 12,500 pounds to screen the individuals using Secure Flight, the following individuals: (1) Individuals who seek to charter or lease an aircraft over 12,500 pounds or who are proposed to be transported on or operate such charter aircraft; and (2) owners and/or operators of such chartered or leased aircraft;

(d) Known or suspected terrorists identified in the TSDB maintained by the TSC; and individuals identified on classified and unclassified governmental databases such as law enforcement, immigration, or intelligence databases; and

(e) Individuals who have been distinguished from individuals on a watch list through a redress process, or other means.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Records containing passenger and flight information (e.g., full name, date of birth, gender, redress number, known traveler number, passport information, and itinerary), information about non-traveling individuals seeking access to an airport sterile area in order to escort a minor passenger or for another purpose approved by TSA, and information about passengers on or individuals seeking to charter or lease an aircraft over 12,500 pounds if TSA grants the aircraft owner or operator requests to use Secure Flight.

(b) Records containing information from an individual's form of identification or a physical description of the individual;

(c) Records obtained from the TSC of known or suspected terrorists in the TSDB and records individuals identified on classified and unclassified governmental watch lists;

(d) Records containing the results of comparisons of individuals to the TSDB and watch list matching analyses;

(e) Records related to communications between or among TSA and aircraft operators, airport operators, owners and/or operators of leased or charter aircraft over 12,500 pounds, TSC, law enforcement agencies, intelligence agencies, and agencies responsible for airspace safety or security, regarding the screening status of passengers or non-traveling individuals and any operational responses to individuals identified in the TSDB;

(f) Records of the redress process that include information on known misidentified persons, including any Redress Number assigned to those individuals; and

(g) Records that track the receipt, use, access, or transmission of information as part of the Secure Flight program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 114, 40113, 44901, 44903, and 44909.

PURPOSE(S):

The Secure Flight Records system will be used to identify and protect against potential and actual threats to transportation security and support the Federal Government's counterterrorism efforts by assisting in the identification of individuals who warrant further scrutiny prior to boarding an aircraft or seek to enter a sterile area or who warrant denial of boarding or denial of entry to a sterile area on security grounds.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(1) To the TSC in order to: (a) Determine whether an individual is a positive identity match to an individual identified as a known or suspected terrorist in the watch list; (b) allow redress of passenger complaints; (c) facilitate an operational response, if one is deemed appropriate, for individuals

who are a positive identity match to an individual identified as a known or suspected terrorist in the watch list; (d) provide information and analysis about terrorist encounters and known or suspected terrorist associates to appropriate domestic and foreign government agencies and officials for counterterrorism purposes; and (e) perform technical implementation functions necessary for the Secure Flight program.

(2) To contractors, grantees, experts, consultants, or other like persons when necessary to perform a function or service related to the operation, modification, or testing of the Secure Flight program in compliance with the Privacy Act of 1974 as amended.

(3) To aircraft operators, foreign air carriers, airport operators, and the Department of Transportation to communicate passenger watch list matching status and facilitate an operational response, where appropriate, to individuals who pose or are suspected of posing a risk to transportation or national security.

(4) To owners or operators of leased or charter aircraft to communicate passenger screening status and facilitate an operational response, where appropriate, to an individual identified in the watch list.

(5) To the appropriate Federal, State, local, tribal, territorial, foreign, or international agency regarding or to identify individuals who pose or are under reasonable suspicion of posing a risk to transportation or national security.

(6) To the Department of Justice or other Federal agency for purposes of conducting litigation or administrative proceedings, when: (a) DHS, or (b) any employee of DHS in his/her official capacity, or (c) any employee of DHS in his/her individual capacity where the Department of Justice (DOJ) or DHS has agreed to represent the employee, or (d) the United States or any agency thereof is a party to the litigation or proceeding or has an interest in such litigation or proceeding.

(7) To the National Archives and Records Administration (NARA) or other Federal agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

(8) To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual.

(9) To the General Accountability Office, DHS Office of Inspector General or other agency, organization, or individual for the purposes of performing authorized audit or oversight operations but only such information as is necessary and relevant to such audit and oversight functions.

(10) To the appropriate Federal, State, local, tribal, territorial, foreign, or international agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order regarding a violation or potential violation of civil or criminal law or regulation when such disclosure is proper and consistent with the performance of the official duties of the person making the disclosure.

(11) To international and foreign governmental authorities in accordance with law and formal or informal international agreements when such disclosure is proper and consistent with the performance of the official duties of the person making the disclosure.

(12) To appropriate agencies, entities, and persons when (a) TSA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) TSA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TSA or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with TSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(13) To appropriate Federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations, including the World Health Organization, for purposes of assisting such agencies or organizations in preventing exposure to or transmission of communicable or quarantinable disease or for combating other significant public health threats; appropriate notice will be provided of any identified health threat or risk.[0]

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to routine use twelve (12), TSA may disclose information to a consumer reporting agency in relation to a breach or compromise of information. TSA may need to share information with a credit reporting agency in order to respond to the suspected or confirmed compromise and prevent, minimize, or remedy any resulting harm, such as identity theft. Such sharing would be limited to the purposes outlined in routine use (12).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained at the Transportation Security Administration, 601 South 12th Street, Arlington, VA, and at other secure TSA facilities in Annapolis Junction, Maryland and Colorado Springs, Colorado. Records also may be maintained at the secured facilities of contractors or other parties that perform functions under the Secure Flight program. The records are stored on magnetic disc, tape, digital media, and CD-ROM, and may also be retained in hard copy format in secure file folders or safes.

RETRIEVABILITY:

Data are retrievable by the individual's name or other identifier, as well as non-identifying information such as itinerary.

SAFEGUARDS:

All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. The system is also protected through a multi-layer security approach. The protective strategies are physical, technical, administrative and environmental in nature and provide role-based access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, including encryption, authentication of sending parties, compartmentalizing databases; auditing software and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

Information in this system is safeguarded in accordance with applicable rules and policies, including any applicable TSA and DHS automated systems security and access policies. The system will be in compliance with Office of Management and Budget (OMB) and National Institute of Standards and Technology (NIST) guidance. Access to the computer system containing the records in this system of records is limited to those individuals who require it to perform their official duties. The computer system also maintains a real-time audit of individuals who access the system.

RETENTION AND DISPOSAL:

Records in this system will be retained in accordance with a schedule to be submitted for approval by NARA and other government-wide records schedules, as applicable. TSA is seeking

to have records relating to individuals cleared through the automated matching process destroyed within 7 days after completion of the last leg of their directional travel itinerary. The Secure Flight program seeks to retain records reflecting watch list matching analysis and results for individuals who initially appear to be a match for 7 years after the completion of the individual's directional travel itinerary. Records associated with an individual who is determined to be a confirmed match will, consistent with established TSA practice, be retained for 99 years after the date of match confirmation. This retention period is consistent with TSC's NARA-approved record retention schedule for TSDB records.

Records reflecting watch list matching analysis (i.e., match or non-match) for any individual who is confirmed to be a match may also be retained in DHS/TSA 011, Transportation Security Intelligence Service Operations Files (69 FR 71835, Dec. 10, 2004).

Records associated with known misidentified persons, as well as the watch list and other government databases will be retained in accordance with the retention periods for the originating systems.

SYSTEM MANAGER(S) AND ADDRESS:

Donald Hubicki, Director, Secure Flight Program Operations, Transportation Security Administration (TSA), TSA–19, 601 South 12th Street, Arlington, VA, 22202.

NOTIFICATION PROCEDURE:

To determine whether this system contains records relating to you, write to the FOIA and Privacy Act Office, Transportation Security Administration (TSA), TSA–20, 601 South 12th Street, Arlington, VA 22202.

RECORDS ACCESS PROCEDURES:

Requests for records access must be in writing and should be addressed to FOIA and Privacy Act Office, Transportation Security Administration (TSA), TSA–20, 601 South 12th Street, Arlington, VA, 22202. Requests should conform to the requirements of 6 CFR part 5, Subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS. The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury. Some information may be exempt from access provisions. An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

If individuals are uncertain what agency handles the information, they may seek redress through the DHS Traveler Redress Program (''TRIP'') (See 72 FR 2294, dated January 18, 2007). Individuals who believe they have been improperly denied entry, refused boarding for transportation, or identified for additional screening by CBP may submit a redress request through the TRIP. TRIP is a single point of contact for individuals who have inquiries or seek resolution regarding difficulties they experienced during their travel screening at transportation hubs—like airports and train stations or crossing U.S. borders. Through TRIP, a traveler can correct erroneous data stored in Secure Flight and other data stored in other DHS databases through one application. Additionally, for further information on the Secure Flight Program and the redress options please see the accompanying Privacy Impact Assessment for Secure Flight published on the DHS Web site at *http://www.dhs.gov/privacy* in this edition of the **Federal Register** and at DHS.GOV. Redress requests should be sent to: DHS Traveler Redress Inquiry Program (TRIP), 601 South 12th Street, TSA–901, Arlington, VA 22202–4220 or online at *http://www.dhs.gov/trip.*

CONTESTING RECORDS PROCEDURES:

Same as ''Notification Procedure'' and ''Record Access Procedure'' above.

RECORD SOURCE CATEGORIES:

Information contained in the system is obtained from U.S. aircraft operators, foreign air carriers, the owners and operators of leased or charter aircraft over 12,500 pounds who request TSA screening, the TSC, TSA employees, airport operators, Federal, State, local, international and other governmental law enforcement , intelligence, immigration, and counterterrorism agencies, other Federal agencies responsible for airspace safety or security, and the individuals to whom the records in the system pertain.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemption will be asserted with respect to identifying information or flight information obtained from passengers and aircraft owners or operators.

This system, however, may contain records or information recompiled from or created from information contained in other systems of records which are exempt from certain provisions of the Privacy Act. For these records or information only, in accordance with 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2), TSA claims the following exemptions for these records or information from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f); and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information. Certain portions or all of these records may be exempt from disclosure pursuant to these exemptions.

Issued in Arlington, Virginia on August 8, 2007.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E7–15964 Filed 8–22–07; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1507

[Docket No. TSA–2007–28972]

RIN 1652–AA48

Privacy Act of 1974: Implementation of Exemptions; Secure Flight Records

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Transportation Security Administration (TSA) is proposing to amend the Transportation Security regulations to exempt a new system of records from several provisions of the Privacy Act. Secure Flight Records (DHS/TSA 019) will include records used as a part of a passenger watch list matching program known as Secure Flight. The Secure Flight program implements a mandate of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (Pub. L. 108–458, 118 Stat. 3638, Dec. 17, 2004) and is consistent with TSA's authority under the Aviation and Transportation Security Act (ATSA). Section 4012(a)(1) of the IRTPA requires TSA to assume from air carriers the comparison of passenger information for domestic flights to the consolidated and integrated terrorist watch list maintained by the Federal Government. Further, Section 4012(a)(2) of IRTPA similarly requires the DHS to compare passenger information for international flights to and from the United States against the consolidated and integrated terrorist watch list before departure of such flights. Under the Secure Flight program, TSA would assume the current watch list matching function to the No Fly and Selectee from aircraft operators. TSA is proposing exemptions for DHS/TSA 019 to the extent necessary to protect the integrity of investigatory information that may be included in the system of records.

DATES: Submit comments by September 24, 2007.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, using any one of the following methods:

Comments Filed Electronically: You may submit comments through the docket Web site at *http://dms.dot.gov.* You also may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov.*

Comments Submitted by Mail, Fax, or In Person: Address or deliver your written, signed comments to the Docket Management System at U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590; Fax: 202–493–2251.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Peter Pietra, Director, Privacy Policy and Compliance, TSA–36, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; facsimile (571) 227–1400; e-mail *TSAPrivacy@dhs.gov*; Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528, e-mail: *pia@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or opinions. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this rulemaking action. See **ADDRESSES** above for information on where to submit comments.

With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. The most helpful comments reference a specific portion of the rulemaking, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file in the public docket all comments received by TSA, except for comments containing confidential information and sensitive security information.[1] TSA will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Upon receipt of such comments, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold them in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS') FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, or advocacy group, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

You may review the comments in the public docket by visiting the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located in the West Building Ground Floor, Room W12–140, at the Department of Transportation address previously provided under **ADDRESSES**. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

[1] "Sensitive Security Information" or "SSI" is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*; or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Abbreviations and Terms Used in This Document

DHS—Department of Homeland Security.
FBI—Federal Bureau of Investigation.
TSA—Transportation Security Administration.

Background

In order to begin the Secure Flight program, Transportation Security Administration (TSA) is publishing this Notice of Proposed Rulemaking (NPRM) to propose exemptions for DHS/TSA 019 to the extent necessary to protect the integrity of investigatory information that may be included in the system of records.

On December 17, 2004, the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (Pub. L. 108–458) was enacted. Section 4012(a) of the IRTPA directs the TSA and the Department of Homeland Security (DHS) to assume from aircraft operators the pre-flight passenger watch list matching function. TSA is carrying out this mandate through the creation of the Secure Flight program.

Section 4012(a)(1) of the IRTPA requires TSA to assume from air carriers the comparison of passenger information for domestic flights to the consolidated and integrated terrorist watch list maintained by the Federal Government. Section 4012(a)(2) of IRTPA similarly requires the DHS to compare passenger information for international flights to and from the United States against the consolidated and integrated terrorist watch list before departure of such flights. Further, as recommended by the 9/11 Commission, TSA may access the ''larger set of watch lists maintained by the Federal Government.'' [2] Therefore, as warranted by security considerations, TSA may use the full Terrorist Screening Database (TSDB) or other government databases, such as intelligence or law enforcement databases (referred to as ''watch list matching''). For example, TSA may obtain intelligence that flights flying a particular route may be subject to an increased security risk. Under this circumstance, TSA may decide to compare passenger information on some or all of the flights flying that route against the full TSDB or other government database.

TSA also is publishing in today's **Federal Register** a Privacy Act System of Records notice establishing a new system of records for the Secure Flight program, entitled Secure Flight Records (DHS/TSA 019). Although not required, aircraft operators may voluntarily choose to begin operational testing with TSA prior to publication of a final rule for the Secure Flight program. In the event an aircraft operator begins early operational testing with TSA, the records created as part of that testing would be included in the Secure Flight Records system and the exemptions claimed in this rulemaking would apply to such records.

The categories of records TSA will create or maintain in the course of the Secure Flight program are described in detail in the system of records notice. TSA would not assert an exemption with respect to information submitted by or on behalf of individual passengers or non-travelers in the course of making a reservation or seeking access to a secured area under the Secure Flight program. This system, however, may contain records or information recompiled from or created from information contained in other systems of records, which are exempt from certain provisions of the Privacy Act. For these records or information only, TSA is proposing certain Privacy Act exemptions for the records contained in DHS/TSA 019 pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2), to the extent necessary to protect the integrity of watch list matching procedures performed under the Secure Flight Program.

Under 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2), an agency may exempt from certain provisions of the Privacy Act a system of records containing investigatory material compiled for law enforcement purposes, classified information, and information pertaining to national security. The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of federal agencies.

In the course of carrying out the Secure Flight program, TSA will review information from Federal Bureau of Investigation (FBI) systems of records and from systems of records of other law enforcement and intelligence agencies if necessary to resolve an apparent match to a Federal watch list. These may include classified and unclassified governmental terrorist, law enforcement, and intelligence databases, including databases maintained by the Department of Homeland Security, Department of Defense, National Counterterrorism Center, and FBI. Records from these systems are exempt from certain provisions of the Privacy Act because they contain law enforcement investigative information and classified information. To the extent the Secure Flight Records system relies on information from such other exempt systems of records, TSA would rely on the Privacy Act exemptions claimed for those systems.

Individuals can seek redress, in accordance with the provisions of proposed 49 CFR part 1560, subpart C, in cases where they believe they have been delayed or prohibited from boarding or denied entrance to the airport sterile area, as a result of the operation of the Secure Flight program. TSA will examine each separate request on a case-by-case basis, and after conferring with the appropriate agency, may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement or national security purposes of the systems from which the information is recompiled or in which it is contained.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public. There are no current or new information collection requirements associated with this proposed rule.

Economic Impact Analyses

This rulemaking is not a ''significant regulatory action'' within the meaning of Executive Order 12886. Further regulatory evaluation is not necessary because the economic impact should be minimal. Moreover, I certify that this rule would not have a significant economic impact on a substantial number of small entities, because the reporting requirements themselves are not changed and because it applies only to information on individuals.

[2] *National Commission on Terrorist Attacks Upon the Untied States,* page 393.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, $100 million or more in any one year, the UMRA analysis is required. This rule would not impose Federal mandates on any State, local, or tribal government or the private sector.

Executive Order 13132, Federalism

TSA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and therefore would not have federalism implications.

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact Analysis

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1507

Privacy.

The Proposed Amendments

For the reasons set forth in the preamble, the Transportation Security Administration proposes to amend part 1507 of Chapter XII of Title 49 of the Code of Federal Regulations, as follows:

PART 1507—PRIVACY ACT—EXEMPTIONS

1. The authority citation for part 1507 continues to read as follows:

Authority: 49 U.S.C. 114(l)(1), 40113, 5 U.S.C. 552a(j) and (k).

2. Add a new paragraph (k) to § 1507.3 to read as follows:

§ 1507.3 Exemptions.

* * * * *

(k) Secure Flight Records. (1) Secure Flight Records (DHS/TSA 019) enables TSA to maintain a system of records related to watch list matching applied to air passengers and to non-traveling individuals authorized to enter an airport sterile area. Pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2), TSA is claiming the following exemptions for certain records within the Secure Flight Records system: 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f), and (g).

(2) In addition to records under the control of TSA, the Secure Flight system of records may include records originating from systems of records of other law enforcement and intelligence agencies which may be exempt from certain provisions of the Privacy Act. However, TSA does not assert exemption to any provisions of the Privacy Act with respect to information submitted by or on behalf of individual passengers or non-travelers in the course of making a reservation or seeking access to a secured area under the Secure Flight program.

(3) To the extent the Secure Flight system contains records originating from other systems of records, TSA will rely on the exemptions claimed for those records in the originating system of records. Exemptions for certain records within the Secure Flight Records system from particular subsections of the Privacy Act are justified for the following reasons:

(i) From subsection (c)(3) (Accounting for Disclosures) because giving a record subject access to the accounting of disclosures from records concerning him or her could reveal investigative interest on the part of the recipient agency that obtained the record pursuant to a routine use. Disclosure of the accounting could therefore present a serious impediment to law enforcement efforts on the part of the recipient agency because the individual who is the subject of the record would learn of third agency investigative interests and could take steps to evade detection or apprehension. Disclosure of the accounting also could reveal the details of watch list matching measures under the Secure Flight program, as well as capabilities and vulnerabilities of the watch list matching process, the release of which could permit an individual to evade future detection and thereby impede efforts to ensure transportation security.

(ii) From subsection (c)(4) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(iii) From subsections (d)(1), (2), (3), and (4) because these provisions concern individual access to and amendment of certain records contained in this system, including law enforcement counterterrorism, investigatory and intelligence records. Compliance with these provisions could: alert the subject of an investigation of the fact and nature of the investigation, and/or the investigative interest of intelligence or law enforcement agencies; compromise sensitive information related to national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; identify a confidential source or disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of these records would interfere with ongoing counterterrorism, law enforcement, or intelligence investigations and analysis activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(iv) From subsection (e)(1) because it is not always possible for TSA or other agencies to know in advance what information is both relevant and necessary for it to complete an identity comparison between aviation passengers or certain non-travelers and a known or suspected terrorist. Also, because TSA and other agencies may not always know what information about an encounter with a known or suspected terrorist will be relevant to law enforcement for the purpose of conducting an operational response.

(v) From subsection (e)(2) because application of this provision could present a serious impediment to counterterrorism, law enforcement, or intelligence efforts in that it would put the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counterterrorism, law enforcement, or intelligence investigations is such that

vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his own activities.

(vi) From subsection (e)(3), to the extent that this subsection is interpreted to require TSA to provide notice to an individual if TSA or another agency receives or collects information about that individual during an investigation or from a third party. Should the subsection be so interpreted, exemption from this provision is necessary to avoid impeding counterterrorism, law enforcement, or intelligence efforts by putting the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

(vii) From subsections (e)(4)(G) and (H) (Agency Requirements) and (f) (Agency Rules), because this system is exempt from the access provisions of 5 U.S.C. 552a(d).

(viii) From subsection (e)(5) because many of the records in this system coming from other system of records are derived from other domestic and foreign agency record systems and therefore it is not possible for TSA to ensure their compliance with this provision; however, TSA has implemented internal quality assurance procedures to ensure that data used in the watch list matching process is as thorough, accurate, and current as possible. In addition, in the collection of information for law enforcement, counterterrorism, and intelligence purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts. However, TSA has implemented internal quality assurance procedures to ensure that the data used in the watch list matching process is as thorough, accurate, and current as possible.

(ix) From subsection (e)(8) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on TSA and other agencies and could alert the subjects of counterterrorism, law enforcement, or intelligence investigations to the fact of those investigations when not previously known.

(x) From subsection (f) (Agency Rules) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(xi) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Issued in Arlington, Virginia on August 8, 2007.

Kip Hawley,

Assistant Secretary.

Hugo Teufel III,

Chief Privacy Officer.

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Federal Register

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 10, 13, 17, and 23

Revision of Regulations for the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 10, 13, 17, and 23

RIN 1018-AD87

Revision of Regulations Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: In this final rule, we, the Fish and Wildlife Service (FWS), revise the regulations that implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), a treaty that regulates international trade in certain protected species. CITES uses a system of permits and certificates to help ensure that international trade is legal and does not threaten the survival of wildlife or plant species in the wild. In this final rule, we have retained most of the general information in the current 50 CFR part 23, but reorganized the sections and added provisions from certain applicable resolutions and decisions adopted by the CITES Conference of the Parties (CoP) at its second through thirteenth meetings (CoP2 – CoP13). The revised regulations will help us more effectively promote species conservation, continue to fulfill our responsibilities under the Treaty, and help those affected by CITES to understand how to conduct lawful international trade in CITES species.

DATES: This regulation is effective September 24, 2007. Incorporation by reference of CITES's *Guidelines for transport and preparation for shipment of live wild animals and plants* and the International Air Transport Association Live Animals Regulations listed in this rule is approved by the Director of the Federal Register as of September 24, 2007.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Management Authority, Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; telephone, (703) 358-2093; fax, (703) 358-2280; or email, *managementauthority@fws.gov.*

SUPPLEMENTARY INFORMATION:

What Acronyms and Abbreviations Are Used in This Rule?

AECA African Elephant Conservation Act (16 U.S.C. 4201-4245)
APHIS U.S. Department of Agriculture, Animal and Plant Health Inspection Service
ATA A combination of the French and English words ''Admission temporaire/Temporary Admission'' used in the name of a type of international customs document, the ATA carnet
CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora, also referred to as the Convention or Treaty
CBP Department of Homeland Security, U.S. Customs and Border Protection
CFR Code of Federal Regulations
CoP Conference of the Parties or a meeting of the Conference of the Parties
ESA Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)
FOIA Freedom of Information Act (5 U.S.C. 552)
FWS U.S. Fish and Wildlife Service
IATA LAR International Air Transport Association Live Animals Regulations
ISO International Organization for Standardization
USDA U.S. Department of Agriculture
WBCA Wild Bird Conservation Act (16 U.S.C. 4901 *et seq.*)

Background

CITES was negotiated in 1973 in Washington, DC, at a conference attended by delegations from 80 countries. The United States ratified the Treaty on September 13, 1973, and it entered into force on July 1, 1975, after the required 10 countries had ratified it. Section 8A of the ESA, as amended in 1982, designates the Secretary of the Interior as the U.S. Management Authority and U.S. Scientific Authority for CITES. These authorities have been delegated to the FWS. The U.S. regulations implementing CITES took effect on May 23, 1977 (42 FR 10465, February 22, 1977), after the first CoP was held. The CoP meets every 2 to 3 years to vote on proposed resolutions and decisions that interpret and implement the text of the Treaty and on amendments to the listing of species in the CITES Appendices. Currently 171 countries have ratified, accepted, approved, or acceded to CITES; these countries are known as Parties.

Proposed rule and comments received: We published a proposed rule on April 19, 2006 (71 FR 20167), to revise the regulations that implement CITES. We accepted public comments on the proposed rule for 60 days, until June 19, 2006. In response to several requests from the public, we reopened the public comment period for an additional 30 days on June 28, 2006 (71 FR 36742). The 2006 proposed rule was a reproposal of revisions proposed on May 8, 2000 (65 FR 26664), which were not finalized. We summarized and addressed comments received on the 2000 proposal in the 2006 proposed rule. Please refer to the preamble to the April 19, 2006, proposed rule for a discussion of those comments.

We received 344 letters in response to the 2006 proposed rule (71 FR 20167). We received comments from individuals, organizations, and State natural resource agencies. Of the comments we received, 240 letters were from Bengal cat enthusiasts and breeders, 33 were from State natural resource agencies and regional associations, 21 were from falconers and falconer organizations, and 13 were from fur trapper organizations.

Resolution consolidation and incorporation: Since 1976, the Parties have adopted 256 resolutions or revisions to resolutions. In 1994, the Parties began an effort to consolidate some of these resolutions. Some resolutions were no longer relevant, and others needed to be combined because several resolutions were adopted at different CoPs on the same or similar subjects. As a result of this process, there are currently 78 resolutions in effect. This rule incorporates certain of these consolidated resolutions, as appropriate and relevant to U.S. implementation of the Treaty. We cite the current numbers of resolutions since previous resolutions have been renumbered. This allows the reader to easily access the documents currently in effect on the CITES website (*http://www.cites.org*).

Stricter national measures: Article XIV of the Treaty explicitly recognizes the rights of Parties to adopt stricter national measures to restrict or prohibit trade, taking, possession, or transport of any wildlife or plant species. Resolution Conf. 11.3 (Rev. CoP13) recommends that Parties make use of stricter national measures if they have determined ''that an Appendix-II or -III species is being traded in a manner detrimental to the survival of that species'' or is being ''traded in contravention of the laws of any country involved in the transaction.'' The United States has adopted stricter national measures, such as the ESA, Marine Mammal Protection Act (16 U.S.C. 1361-1407), and Lacey Act Amendments of 1981 (16 U.S.C. 3371-3378).

As outlined in the preamble to CITES, ''peoples and States are and should be the best protectors of their own wild fauna and flora.'' CITES recognizes the sovereign right of a country to regulate trade by passing stricter national measures to help in the conservation of species. Under CITES, an exporting country does not have a sovereign right to override an importing country's laws. When a Party sends information to the Secretariat on how its stricter national measures will affect trade in CITES

species, the Secretariat provides that information to other Parties through a notification. These notifications are available to the public on the CITES website (see § 23.7).

Plain language: We used plain language in writing these regulations to make them clearer and easier to use. We believe the regulations use an appropriate level of language to lay out the technical requirements of a multilateral treaty.

General comments: A number of commenters commended us for revising the U.S. CITES implementing regulations and also provided comments on specific sections of the 2006 proposed rule (71 FR 20167). We have addressed comments specific to a particular section in the appropriate section of this preamble. One State agricultural agency noted that, for the aquaculture industry in that State, our changes will help simplify and clarify the documentation process for dealing with CITES species.

One commenter expressed general opposition to international trade in wildlife. We appreciate the comment, but we will not address it here as it is outside the scope of this rulemaking.

Another commenter suggested changes to specific clearance procedures at a port of entry. Those comments were outside the scope of this rule, and we encourage the commenter to provide input when the FWS proposes changes to 50 CFR part 14, which includes the specific clearance procedures pertaining to the import, export, and transport of wildlife.

One commenter asked that we establish a ''compliance service'' where individuals could receive assistance in filling out and filing the required forms and documents. The commenter noted that the IRS provides such a service and that we should do the same. We believe that such assistance already exists on our website, where we provide information to guide applicants through the required agency permits, answer frequently asked questions, and direct them to the relevant offices for specific information. In addition, applicants can request information and permit application forms from the U.S. Management Authority and wildlife inspection offices. See § 23.7 for contact information.

One commenter argued that all applications for trade in Appendix-I and -II species should be subject to public notice and review. We disagree. Most of the applications we receive involve commonly traded Appendix-II species. As outlined in this rule, the FWS has established specific procedures for making the required determinations under CITES. We do not believe that requesting public comments on all applications involving CITES species would provide a greater level of insight or provide information that is not already available to us.

One commenter recommended adding a provision that would allow for disclosures to be made without penalty and offered the example of identifying merchandise that should have been declared but was not discovered until after the shipment was imported. We did not accept this recommendation because we believe such a provision would undermine our enforcement efforts and our obligations under CITES. We treat specimens traded contrary to CITES the same as other forms of illegally acquired goods. A specimen that has been traded contrary to CITES becomes contraband at the time it enters the jurisdiction of the United States.

One commenter argued that the regulations should allow for electronic submission of CITES information and payment of permitting fees. We recognize the need to keep pace with technology and are actively pursuing an electronic interface in partnership with other Federal agencies to streamline CITES procedures for the trade community. We are also working on an electronic permitting system that would allow submission of applications for CITES documents and applicable fees. Nothing in these regulations would prevent us from allowing electronic submission when we have the technology in place.

Section-by-Section Analysis

The following parts of the preamble explain the final rule, discuss the substantive issues of sections for which we received comments, outline significant changes from the 2006 proposed rule (71 FR 20167), and provide responses to public comments.

What Are the Changes to 50 CFR Parts 10, 13, and 17?

Definitions (§ 10.12): We provide a definition of the United States to correctly reflect areas under U.S. jurisdiction. One commenter suggested that the term United States be replaced with regulated territory because of potential confusion due to more common meanings of the term. United States is the term consistently used in conservation statutes administered by the FWS to define the jurisdictional scope of the statute. We believe that consistency between the term used in these regulations and the term used by Congress will reduce, not increase, confusion.

Application procedures (§ 13.11): As noted in our final rule on FWS permit fees (70 FR 18311), we will not charge a fee to any Federal, tribal, State, or local government agency. Therefore, we will not charge a fee to a State or Tribe seeking to gain approval of a CITES export program. We also will not charge a fee to add an institution to the Plant Rescue Center Program because this is a voluntary program designed to place live plant specimens that have been confiscated upon import or export, and thereby helps the United States fulfill its CITES implementing responsibilities.

Thirty-five commenters, representing individual State natural resource agencies, State natural resource agency organizations, and trapper organizations, supported not requiring application fees to establish a CITES export program. One commenter opposed our decision not to charge a fee to government agencies seeking approval of a CITES export program. It is our longstanding policy not to charge a fee to Federal, tribal, State, or local governments. Another commenter stated that fees should be raised to reflect the actual value of the wildlife specimen in trade and that no applicant should be exempt from paying an application fee. Thirteen trapper organizations did not agree that small-scale trappers should be charged permit application fees. In addition, one commenter argued that publicly supported, nonprofit conservation organizations should be exempt from any application fees. The FWS fee structure is based on the nature of the activities being permitted, as well as the level of complexity and the time required to process applications and maintain active permit files. For further discussion of our application fees see 70 FR 18311, April 11, 2005.

U.S. address for permit applicants (§ 13.12): This section requires an applicant to provide an address within the United States when applying for a permit. In a number of situations, a business or an individual in a foreign country may request a CITES document from us for a shipment the entity owns but is shipping out of the United States. We cannot issue the CITES document showing the exporter's foreign address for items that are leaving the United States. Foreign visitors who are requesting a CITES document may provide a temporary address, such as a hotel, since they do not permanently reside within the United States.

For commercial activities conducted by applicants who reside or are located outside of the United States, the name and address of the commercial entity's agent in the United States must be included. We consider any transaction

involving a seller and a buyer, or any retail or wholesale transaction that provides a valuable consideration in exchange for the transfer of a wildlife or plant specimen as a commercial activity. However, we do not consider a hunter who exports his or her personal sport-hunted trophy to be involved in a commercial activity under this section.

Two commenters agreed with these requirements, but one of them suggested that, for non-resident applicants who could only provide a temporary address, we should also require their permanent address in their country of residence, as well as a permanent U.S. address of an agent or attorney. We require a permanent U.S. address for the applicant's agent for commercial transactions. We do not require a foreign address for noncommercial transactions. However, most noncommercial transactions carried out by non-U.S. residents consist of personal effects or personally hunted trophies that are being sent to the individual's home, and the applicant's foreign address is typically included on the application.

One commenter asked that we clarify that the U.S. address does not need to be a domiciliary address or residence. For U.S. residents who are applying as individual applicants, the address they provide must be the physical address of their residence. In some cases, however, for permits for personal or household effects being held in the United States pending issuance of a permit, the U.S. address may be a relative, the storage facility, or the agent. For organizations or companies applying for a permit, we require the company's physical address where the records regarding the application are maintained.

One commenter recommended that the requirements of 50 CFR 13.12 be brought into compliance with CBP's Filing Identification Number (FIN) (19 CFR 24.5). We did not accept this suggestion. The CBP Filing Identification Number is associated with account-based import activities specific to the importing requirements of CBP. The application process carried out by the FWS is a transactional-based activity that requires the identification of both companies and individuals. In addition, we do not have access to CBP's database that contains the FIN data, and therefore we could not utilize the system on a daily basis, as would be required to carry out our permitting process.

Continuation of permitted activity during renewal (§ 13.22(c)): This paragraph sets out the general permit procedures that allow continuation of the permitted activity after the submission of an application for renewal. The regulations in 50 CFR part 13 follow the Administrative Procedure Act (5 U.S.C. 558(c)). We received one comment suggesting that all businesses should be required to renew permits before they expire. For an activity of a continuing nature, when a permittee has made timely and sufficient application for renewal of a permit, the permit does not expire until the agency has made a final determination on the application.

CITES documents, however, do not cover an activity of a continuing nature and are considered void upon expiration. This section clarifies that a permittee may not use a CITES document once it has expired. For other permits of a continuing nature, however, we have retained the process that allows the permittee to conduct permitted activities during renewal if the conditions outlined in 50 CFR part 13 are met. One commenter supported this approach. Another commenter thought we should allow an extension of the period of validity of CITES documents after they have expired, while the renewal process is underway. The commenter did not believe that the Treaty or current resolutions support our policy not to allow extensions. We disagree. Article VI of the Treaty and Resolution Conf. 12.3 (Rev. CoP13) provide specific periods of validity for most permits and certificates. In addition, Resolution Conf. 12.3 (Rev. CoP13) states that, once a CITES document has expired, the permit or certificate is void. While the resolution does not address a period of validity for all of the certificates discussed, for consistency, we have established specific periods of validity for each type of CITES document (see § 23.54). CITES documents that have not been used may be reissued. However, permittees must contact us prior to the expiration date, return the unused permit, and give us sufficient time to review the reissuance request and issue a new permit or certificate.

Maintenance of records (§ 13.46): Permittees are required to maintain records. However, our authority to inspect records is limited to areas within the United States. Therefore, to ensure that we are able to carry out our responsibility to inspect records when necessary, § 13.46 outlines the requirement that permittees who reside or are located in the United States, as well as permittees who reside or are located outside the United States but are conducting commercial activities within the United States, maintain records in this country. We received 31 comments in support of this change. One of these commenters also recommended that we establish a timeframe during which permittees must maintain records. A timeframe of 5 years is already codified in § 13.46. However, as discussed under § 23.34, since we must make specific findings based on information provided primarily by an applicant, it may be advisable to maintain records for longer than 5 years in some cases (see discussion on § 23.34).

Import exemption for threatened, Appendix-II wildlife (§ 17.8): This section puts into regulation the exemption under the ESA, section 9(c)(2), for import of CITES Appendix-II wildlife that is also classified as threatened under the ESA, when the taking and export meet the provisions of CITES and the import is not made in the course of a commercial activity. This ESA provision only exempts the import prohibitions; it does not exempt acquisition in foreign commerce in the course of a commercial activity. Therefore, we require both the acquisition and import to be noncommercial because we consider any transfer of a specimen in pursuit of gain or profit to be a commercial activity. Thus, a person who is importing a specimen under this provision must provide documentation to the FWS at the time of import that shows the specimen was not acquired in foreign commerce in the course of a commercial activity. This exemption does not apply to species that have a special rule in 50 CFR part 17.

Two commenters voiced their support for this section. Another commenter argued that the exemption for certain threatened species that are also listed in Appendix II is inconsistent with the ESA. As we discussed in the 2006 proposed rule (71 FR 20167), Congress provided this exemption, and we believe that this section accurately implements it.

One commenter suggested that we add a definition of ''in the course of a commercial activity.'' As noted by the commenter, commercial activity is defined in section 3 of the ESA. Therefore, we do not believe it is necessary to define the full term ''in the course of a commercial activity.''

This same commenter suggested that a purchase for scientific use, such as an acquisition by a museum, should be covered by the exemption under 17.8(b) and that the exemption should apply to any specimen used for science as long as the collection and sale are legal in the country of origin. We disagree. The exemption under section 9(c)(2) of the ESA applies only if the importation is not made in the course of a commercial activity, regardless of who is commercializing the specimen. Many imports for scientific use are likely to meet the exemption, but the purchase of

a specimen for scientific use is likely to qualify as commercial and thus require issuance of an ESA permit prior to importation.

Two commenters asserted that the requirement for documentation is overly broad and suggested that the FWS describe the type of documentation that would be acceptable. Because of the wide variety of imports that may qualify, and to provide flexibility to the importer, we did not list what form of documentation would be required. We will accept any documentation from the importer regarding the acquisition of the specimen that shows that it was not acquired in foreign commerce in the course of commercial activity. Such documentation may include, for example: proof of a personal sport hunt, documents related to museum or zoological exchange, inheritance documents, or scientific collecting permits.

One commenter stated that requiring such documentation violates the exemption under section 9(c)(2) of the ESA. We agree that the exemption allows a qualifying specimen to be imported into the United States without first having obtained an ESA import permit, but it remains the burden of the importers to show that they qualify for the exemption, including by obtaining and presenting all required CITES documentation, fulfilling all document requirements under section 9(d), (e), and (f), and showing that the importation is not being made in the course of a commercial activity.

One commenter argued that the exemption should only apply when the importer can prove that both the acquisition of the specimen and the importation are noncommercial. We agree, and we require the importer to meet both criteria in § 17.8(b)(1). In § 17.8(b)(5), we specifically require documentation showing that the specimen was not acquired in foreign commerce in the course of a commercial activity. Importers of any wildlife specimens, whether CITES specimens or not, must show the purpose of import under general government importation requirements. We are able to determine from this documentation whether the import is in the course of a commercial activity. However, documentation showing the specimen was not acquired in foreign commerce does not typically accompany a shipment. Therefore, we specifically require that such documentation be provided to us.

Special rule for threatened crocodilians (§ 17.42(c)): In accordance with this special rule, we allow meat of saltwater crocodiles (*Crocodylus porosus*) originating in Australia and of Appendix-II Nile crocodiles (*C. niloticus*) to be traded without tags, and we clarify that this includes all forms of meat. We do not believe that international trade in crocodilian meat poses a significant conservation risk, but we note that CITES documents still would be required for any meat shipments. The special rule prohibits import into the United States of live specimens and viable eggs of any threatened crocodilians without an ESA import permit.

One commenter disagreed with our assertion that international trade in meat of saltwater crocodiles originating in Australia and Appendix-II Nile crocodiles poses no significant conservation risk and could therefore be traded without tags. We note that the crocodilian product most common in international trade is skin and U.S. import data for 2002 - 2005 show no imports of saltwater or Nile crocodile meat. Therefore, we continue to believe that this type of trade does not pose a significant conservation threat. In addition, there is no CITES requirement for tagging of crocodilian meat.

The special rule includes reporting requirements for range countries. In our final yacare caiman (*Caiman yacare*) rule published on May 4, 2000 (65 FR 25867), we noted that the FWS depends primarily on range countries to monitor yacare caiman. To assist us in monitoring the status of yacare caiman, we require that the governments of range countries wishing to export specimens to the United States for commercial purposes provide a report every 2 years that includes the most recent information available on the status of the species. This information assists us in determining the current conservation status of the species and is used to determine if the species is recovering and may warrant delisting. We also have a section describing conditions under which trade restrictions can be applied to the import of yacare caiman from range countries, including the failure to submit the reports or failure to respond to requests for additional information.

Three commenters supported amendments to the special rule regarding reporting requirements for range countries of the yacare caiman in § 17.42(c). They urged us to include similar reporting requirements if additional crocodilian species are reclassified as threatened under the ESA and are included in the special rule. We will consider monitoring and reporting requirements for other crocodilians on a case-by-case basis, because the conservation needs may vary by species or population.

One commenter argued that we should require yacare caiman monitoring data to be submitted annually instead of biennially and should expand the list of the types of monitoring data required. We believe that the final rule to reclassify the yacare caiman (65 FR 25867, May 4, 2000) adequately justifies reporting requirements for range countries of the species.

What Are the Changes to Subpart A of 50 CFR Part 23—Introduction?

This subpart describes our responsibilities under CITES.

Scope (§ 23.2): This section consists of a table with a series of questions and answers to help people determine if CITES regulations apply to their proposed activities. Decisions involve whether a specimen is listed under CITES, is exempt from CITES, is involved in a type of international trade regulated by CITES, and was illegally acquired or traded in contravention of CITES.

The possession and domestic trade of legal specimens are not regulated by CITES unless the specimens had been traded internationally under specific conditions of a CITES document and the conditions still apply. The possession and domestic or international trade of illegally imported specimens, however, are prohibited. Further, any possession of offspring of illegal specimens is also considered illegal. A specimen that has been traded contrary to CITES becomes contraband at the time it enters the jurisdiction of the United States. If such a specimen makes its way into the United States, the individual or business holding or having control of the specimen has no custodial or property rights to the specimen and, therefore, no right to possess, transfer, breed, or propagate such specimens. Further, we clarify that intrastate or interstate movement of specimens traded contrary to CITES involves possession of unlawfully traded specimens and is, therefore, prohibited. We note that these prohibitions are not new with this final rule. The regulatory requirements for CITES specimens, including possession, have been in place since 1977, and the statutory prohibition has been in effect since July 1975.

More than 25 State fish and wildlife resource management agencies and regional fish and wildlife agency associations endorsed our inclusion of a series of questions to assist the regulated community in determining when CITES applies to a proposed activity and our clarification regarding intrastate and

interstate movement of specimens traded contrary to CITES.

One commenter expressed support for the provision making the possession of and trade in illegally acquired specimens and their offspring illegal and encouraged us to specify that requirement in more detail in the regulation. However, another commenter expressed concern regarding our position on the possession of and trade in offspring of illegally imported specimens. The commenter also was concerned about the possible harm to offspring caused by shipping them back to the country of origin. We continue to maintain that any possession of offspring of illegal specimens is considered illegal, and we will take appropriate action when we become aware of such situations. However, we consider the health and well being of a live specimen that has been confiscated or forfeited to us in determining whether to place it in a facility in the United States or return it to the country of origin.

Other applicable regulations (§ 23.3): In this section we reference applicable regulations in other parts of subchapter B and title 50, since many CITES species are covered by one or more other laws. We also notify the public about the possible application of State, tribal, and local regulations. More than 25 State fish and wildlife resource management agencies and regional fish and wildlife agency associations endorsed the addition of a new paragraph notifying the regulated community of the additional requirement for complying with State, tribal, and local requirements when engaging in activities with CITES species.

Under Article XIV(1)(a) of the Treaty, each Party retains the right to adopt stricter national measures that regulate or prohibit the import, export, taking, possession, or transport of CITES species. More restrictive State or local laws that regulate or prohibit the import, export, or re-export of such species, or their parts, products, or derivatives, must be observed for CITES species that are not listed under the ESA. See *H.J. Justin & Sons, Inc.* v. *Deukmejian*, 702 F.2d 758 (9th Cir. 1983), *cert denied*, 464 U.S. 823. However, in instances where a CITES species is also listed as endangered or threatened under the ESA, any State or local law that would effectively prohibit the import or export of, or interstate or foreign commerce in, specimens of such species is void to the extent that such trade is authorized under the ESA, its implementing regulations, or any ESA permit or exemption. See 16 U.S.C. 1535(f); *Man Hing Ivory & Imports, Inc.* v. *Deukmejian*, 702 F.2d 760 (9th Cir. 1983). One commenter disagreed with this assertion and stated that it is contrary to the standard rules regarding the relationship between State and Federal laws. Our statement reflects the decision of the United States Court of Appeals for the Ninth Circuit in the referenced case, which held that section 6(f) of the ESA, together with an FWS regulation on African elephants (*Loxodonta africana*), preempted a State prohibition on trade in African elephant products by a trader who had secured all necessary Federal permits.

Definitions (§ 23.5): Whenever possible we define terms using the wording of the Treaty and the resolutions. Most defined terms are included in this section, but some less frequently used terms are defined in the section in which they are used.

Definition of ''applicant'': Although one commenter believed that we should define the term applicant here to be only a person who owns the specimen(s) subject to trade, we have not defined applicant in this part because the general permit regulations in 50 CFR 13.1 provide sufficient guidance. An applicant must have a valid connection to the transaction and be the person who is responsible for meeting the terms and conditions of the permit. When a broker, attorney, taxidermist, or other person applies for a permit on behalf of the owner of the specimen, he or she must establish a connection to the transaction through a contract or power of attorney and, along with the person represented, becomes the party responsible for meeting the terms and conditions of the permit.

Definitions of ''bred for commercial purposes'' and ''bred for noncommercial purposes'': We defined these two terms as they relate to the export and re-export of Appendix-I wildlife specimens. These definitions are the result of in-depth discussions by the Parties over the registration of commercial breeding facilities, which resulted in the adoption of Resolution Conf. 12.10 (Rev. CoP13). The Treaty provides in Article VII(4) that specimens of Appendix-I species bred in captivity for commercial purposes shall be deemed to be specimens of species included in Appendix II (see § 23.46). It also provides in Article VII(5) that specimens that are bred in captivity may be issued an exemption certificate (see § 23.41). Although the Treaty does not use the term ''bred for noncommercial purposes'' in paragraph 5, the Parties have agreed to use this term as the intended meaning of Article VII(5) because Article VII(4) addresses bred for commercial purposes. In Resolution Conf. 12.10 (Rev. CoP13), the Parties agreed to strict definitions for these two terms. Facilities that are breeding for commercial purposes must be registered to export specimens. Facilities that are breeding for noncommercial purposes must be participating in a cooperative conservation program with one or more of the range countries for the species.

One commenter sought clarification on whether an Appendix-I animal bred and raised on a U.S. game ranch, where efforts are being made to conserve the species, would constitute a specimen bred for commercial purposes. If the game ranch was conducting activities that would categorize the facility as commercial (e.g., sale, purchase, or exchange of animals resulting in an economic gain), then the animals bred on the ranch would be considered bred for commercial purposes. This would apply even if the game ranch were carrying out activities that benefited the species within its natural range, such as participation in a cooperative conservation program.

One commenter did not understand how any facility breeding Appendix-I species could engage in noncommercial breeding activities. The commenter believed that, due to the difficulty of distinguishing between commercial breeding and noncommercial breeding, the FWS should combine the two activities under a single bred-in-captivity definition and require that all facilities breeding Appendix-I or -II species become registered. We disagree. Since the Treaty does not prohibit or control the commercial breeding of Appendix-II species, there is no reason to establish a registration process for facilities breeding Appendix-II species. We are confident that the application review process established for the export of Appendix-II specimens is adequate to provide the necessary oversight and control of commercial breeding facilities for Appendix-II species. For Appendix-I species, the Treaty makes a distinction between commercial and noncommercial breeding, and the Parties have enacted resolutions to implement this distinction. Consequently, these regulations outline the criteria for determining when a breeding activity is commercial versus noncommercial, and provide a mechanism to register commercial breeding operations with the Secretariat. To eliminate any confusion and underscore the distinction between commercial and noncommercial breeding, we have added a sentence to the definition of ''bred for commercial purposes'' to clarify that any captive-bred Appendix-

I specimen that does not meet the definition of ''bred for noncommercial purposes'' is considered to be bred for commercial purposes. For the same reason, we have made a minor amendment to the definition of ''bred for noncommercial purposes'' to make it clear that to qualify as noncommercial each donation, exchange, or loan of the specimen must be noncommercial.

Definition of ''commercial'': Three commenters argued that the definition of commercial is too broad and that it is inconsistent with the definition of commercial activity in the ESA, which implements the Convention. We disagree. The new regulatory definition is consistent with the term defined in the ESA. The Convention regulates trade in listed species, and commercial activity under the ESA relates to ''all activities of industry and *trade*, including, *but not limited to*, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling.'' The definition of commercial in § 23.5 is also consistent with CITES Resolution Conf. 5.10, which explains that an activity should be considered commercial if its purpose is to obtain an economic benefit, including profit, and is directed toward resale, exchange, provision of a service, or other form of economic use or benefit. The definition is also consistent with the use of the term in Resolution Conf. 12.10. All CITES resolutions that address commercializing a specimen focus on use of the specimen in a manner that results in economic benefit.

A number of commenters provided specific examples of transactions that they thought should qualify as noncommercial, such as purchase of a specimen for scientific purposes at a yard sale or estate sale; purchase from a person who is not a collector; or sale by a museum. Determination of whether a specific use qualifies as commercial or noncommercial must be made on a case-by-case basis taking into consideration all of the facts and circumstances. However, we note that, consistent with Resolution Conf. 5.10, the determination is focused on the use of the specimen, not the nature of the transaction. Trade may involve the exchange of some funds to compensate a party for costs such as care and maintenance of a specimen, storage costs, or taxidermy work, which themselves do not necessarily make the trade commercial.

One commenter argued that for trade to be commercial, both parties must have commercial interests. We disagree. Economic enrichment can result when just the importer or just the exporter is obtaining an economic gain or benefit from the trade. The definitions of commercial and noncommercial in this part are used to distinguish trade and uses of specimens for which commercial uses must be limited from those for which commercial uses are not limited. The FWS cannot fulfill its treaty responsibilities unless it examines all ways in which a specimen can be commercialized.

One commenter argued that including a donation that is used as a tax deduction as commercial in essence amends the Internal Revenue Code and asserted that whether something is eligible for a tax deduction is not a matter for the FWS to decide. We are not interpreting or amending the Internal Revenue Code. We are not describing what may or may not be eligible as a charitable contribution, but rather, we are fulfilling our responsibility not to authorize uses of certain CITES specimens that are primarily commercial in nature. Although we believe that in some cases a tax deduction may qualify as an economic gain or benefit, we have removed the phrase, ''or tax benefits'' from this definition, to eliminate confusion. See also our responses to comments received on § 23.55.

One commenter also challenged that part of the definition that applies to the intended, as well as the actual, use of the specimen. Determinations under CITES cannot be limited to the current, immediate action being taken with the specimen, but may also require consideration of subsequent actions that the person intends to take at the time of the determination. For example, a person may be personally importing a specimen in a manner that at first appears to be noncommercial, but if there is evidence to show that the person intends to sell the specimen and obtain a profit once the specimen is located within the United States,then the purpose is commercial. The definition is written to make clear that the FWS looks at all actions that the person intends to take involving the specimen, not simply the current, most immediate action.

Definitions of ''household effects'' and ''personal effects'': One commenter supported our definitions of household effect and personal effect to mean only dead wildlife or plant specimens.

Definition of ''introduction from the sea'': We define this term with the language in Article I(e) of the Treaty. Over the last few years, a number of important events have occurred related to introduction from the sea. At CoP11 and CoP13, the Parties considered proposed resolutions on introduction from the sea and were unable to reach consensus on a definition. At CoP12, the Parties agreed to look at marine issues, including introduction from the sea, in consultation with the Food and Agriculture Organization of the United Nations (FAO). In May and June of 2004, FAO convened two Expert Consultations to consider introduction from the sea and other issues related to marine species covered by CITES. At CoP13, the Parties agreed to convene a workshop on introduction from the sea, taking into account the work done through FAO and the relevant documents and discussions from previous CoPs. The workshop was held in November – December 2005. The CITES Secretariat has prepared a document on introduction from the sea, based on discussions at the workshop, for consideration by the Parties at CoP14, to be held in June 2007. We recognize that the Parties may decide on an interpretation of introduction from the sea in the future, but in the meantime the regulations clarify when the prohibition applies, and when and what types of CITES documents are needed for international trade.

One commenter suggested that we adopt the definition of ''the marine environment not under the jurisdiction of any State'' agreed by the 2005 workshop. This definition, although agreed by the workshop, is still under discussion in CITES and will be considered by the Parties at CoP14. We believe it is likely that changes will be made to the definition at the CoP and that it would be premature for us to adopt a definition before it has been accepted by the Parties.

Definition of ''parental stock'': Based on the language in Resolution Conf. 9.19 (Rev. CoP13) on nursery registration and Resolution Conf. 12.10 (Rev. CoP13) on registration of operations that breed Appendix-I wildlife for commercial purposes, we use the term ''parental stock'' to mean the original breeding or propagating specimens that produced subsequent generations of captive or cultivated specimens. Two commenters supported our definition.

Definition of ''precautionary measures'': When there is uncertainty regarding the status of a species or the impact of trade on the conservation of a species we are cautious and act in the best interest of the conservation of the species in making decisions on CITES listings and permit findings. We define and use the term ''precautionary measures'' to describe this approach. While the definition is taken from the concept described in Annex 4 of Resolution Conf. 9.24 (Rev. CoP13), we use it in these regulations because it describes the way we have always

approached non-detriment findings and species listing decisions when there is uncertainty regarding the status of a species or the impact of trade on the conservation of a species. The use of precautionary measures in these instances is consistent with the intent of the Treaty, which is to protect species against over-exploitation. Several commenters supported our definition of precautionary measures. One asked that we provide additional clarification on what information we will use to determine whether or not to issue a permit. Section 23.33 addresses the process we use when evaluating an application. In addition, §§ 23.60, 23.61, and 23.62 address the processes for making the required findings under CITES. We direct the commenters to those sections for more detailed discussion on how we implement the use of precautionary measures.

Definition of ''ranching'': We have not defined this term. At CoP13, the Animals and Plants Committees (committees established by the Parties to provide technical support to the Parties and to the Secretariat) were tasked with looking at production systems, including the consideration of source codes, which include ''R'' for ranching. This work is still ongoing. One commenter suggested that we develop a working definition of ranching until the Parties come to an agreed definition. We believe that it would be premature, and result in additional confusion, to adopt a definition before the production systems discussions are concluded.

Definition of ''readily recognizable'': We base our definition of readily recognizable on Resolution Conf. 9.6 (Rev.). Two commenters supported our definition.

Definition of ''sustainable use'': We define this term as the use of a species in a manner and at a level that maintains wild populations at biologically viable levels for the long term. It is essentially the same definition used in 50 CFR part 15 to implement the WBCA. The wording has been slightly edited to be consistent with language used in these regulations.

We believe that sustainable use is the essence of a CITES non-detriment finding, and these regulations provide a clear, scientifically based definition of the term. An exporting country can make a finding of non-detriment only if it can show that a given level of harvest is consistent with the long-term viability of the species. This finding must be based on professionally recognized management practices and the best available biological information. The Parties adopted Resolution Conf. 12.8 (Rev. CoP13), which provides for review of significantly traded species, to ensure that countries exporting those species have made the appropriate findings and the export levels are sustainable. Countries with species subject to this review must demonstrate the scientific basis for the quantity of exports they are allowing. (See preamble discussion on non-detriment findings (§ 23.61)). Three commenters supported our definition of sustainable use.

One commenter believed that it was unnecessary for us to state in the preamble to the 2006 proposed rule (71 FR 20167) that sustainable use can include adaptive management but that, ''adaptive management does not...imply that when there are gaps in information the assumption would be that trade would be sustainable.'' Our intent is not to minimize the value of adaptive management. However, adaptive management is not the only information considered when determining if trade would be sustainable. When making non-detriment findings, we will consider all relevant biological and trade information (see § 23.61).

One commenter agreed with us that sustainable use is the essence of a CITES non-detriment finding. However, the commenter noted that not all permit applications are for activities that have an impact on wild populations. We agree and take this into consideration when making non-detriment findings. Even if a specimen is considered captive bred under the Treaty, certain conditions must be met, including that the founder stock was acquired legally and in a manner non-detrimental to the survival of the species (see §§ 23.46, 23.63).

One commenter stated that certain phrases in our definition could be interpreted in multiple ways, and asked us to provide additional discussion of several phrases, including ''biologically viable,'' ''long term,'' and ''role or function in its ecosystem.'' We do not believe that these phrases require additional clarification because they are concepts that are inherent to conservation and wildlife management. Furthermore, they are not defined in the Treaty or in resolutions agreed by the Parties. We use these concepts for guidance in making non-detriment findings.

Definition of ''traveling exhibition'': We revised the definition of traveling exhibition for clarity, in response to comments received (see preamble discussion for § 23.49).

Management and Scientific Authorities (§ 23.6): Under Article IX of the Treaty, each Party must designate at least one Management Authority and one Scientific Authority. In the United States, the Secretary of the Interior is designated as the CITES Management Authority and Scientific Authority, and these authorities have been delegated by the Secretary and the Director of the FWS to different offices within the FWS. This section summarizes the major roles of these authorities in the United States. The roles include a wide range of activities, such as the issuance and denial of permits; making scientific and management findings; monitoring of trade and trade impacts; communication with the Secretariat and other countries on scientific, administrative, and enforcement issues; and evaluation of species' status and trade. Another role is to provide training and technical assistance to countries when possible (Resolution Conf. 3.4). Although other Federal agencies, as part of a larger federal involvement in international affairs, also play a role in CITES efforts, for example in communicating with the Secretariat and representing the United States at CITES meetings, they are not part of the Management Authority or the Scientific Authority for the United States.

A number of State fish and wildlife resource management agencies noted that the inclusion of this section summarizing the major roles of the Management and Scientific Authorities was very useful to the regulated community. Additionally, some of these commenters remarked on the need to clarify the process by which a non-Party designates competent authorities to fulfill the role of a Management and Scientific Authority to engage in international trade in CITES species. We decline to make a change in response to this comment because this section is intended to outline the roles of a Management Authority and a Scientific Authority rather than outline the process by which they are designated.

Contact information (§ 23.7): The table in this section outlines the type of information available from the U.S. Management Authority, U.S. Scientific Authority, the FWS Office of Law Enforcement, APHIS, CBP, and the Secretariat, and the different ways you can contact each office. APHIS is the contact office for information on plant clearance procedures even though the formation of CBP split CITES responsibilities for import and export of plants. CBP inspects and clears shipments of dead CITES plant materials being imported into the United States and live plants being imported from Canada at a designated border port. CBP also identifies and regulates CITES materials in passenger baggage, including live plants. APHIS

continues to inspect and clear shipments for the export and re-export of live and dead plants, and the import of live plants, except for live plants being imported from Canada at a designated border port.

One commenter noted the absence in this section of the contact information for the appropriate office in the U.S. Department of Agriculture for live animal clearance procedures. Another commenter suggested that we include contact information in this section for APHIS Veterinary Services, National Center for Import and Export (NCIE), and the Centers for Disease Control (CDC) because imports of live wildlife and wildlife products may also be regulated by these offices. The commenter pointed out that this information would be useful to the large number of pet bird owners who travel into and out of the United States with their pet birds. Since neither NCIE nor the CDC has direct responsibility for the inspection or clearance of shipments of live CITES specimens, we have declined to include their contact information in this section.

Information collection (§ 23.8): Each information collection, including each application form, that we use must be reviewed and approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These information collections undergo review every 3 years. This process gives the public an opportunity to provide input concerning the amount of time it takes to complete the forms and reports and to prepare the information requested. One commenter mistakenly thought that our estimate for the amount of time it takes to complete an application was an estimate of the length of time it takes to obtain a permit.

What Are the Changes to Subpart B of 50 CFR Part 23—Prohibitions, Exemptions, and Requirements?

In this subpart, we detail the activities that are prohibited, circumstances when exemptions may apply, and requirements for international movement of specimens. CITES uses a system of documents to ensure that trade in protected species is legal and does not threaten the survival of wildlife or plant species in the wild. The Treaty outlines standardized information that must be included on these documents, and based on experience in inspecting shipments and enforcing CITES, the Parties have adopted a number of resolutions to refine the types of information that need to be included on documents for Parties and non-Parties.

Prohibitions (§ 23.13): This section implements the international trade prohibitions under CITES. We list introduction from the sea separately from import to clarify that CITES treats these activities differently. We include the phrase ''engage in international trade'' in the list of prohibitions to clarify that international trade in specimens in violation of these regulations by any person subject to U.S. jurisdiction is prohibited even if specimens are not actually imported into or exported from the United States.

The regulatory language is derived from the language in section 9(c)(1) of the ESA, which makes it unlawful for any person subject to the jurisdiction of the United States to engage in trade contrary to the provisions of CITES. The ESA does not limit this prohibition to import into or export from the United States, but further requires U.S. citizens, and others subject to U.S. jurisdiction, engaging in trade outside of the United States to abide by CITES requirements as a matter of U.S. law. Although this activity may be difficult to detect, we will take enforcement action when appropriate.

Three commenters expressed their support for the clarification in § 23.13 that trade in violation of the regulations by a person subject to U.S. jurisdiction is prohibited even if the specimen is not imported into or exported from the United States. They noted that this will ensure that actions by U.S. citizens do not undermine the purposes of CITES outside the United States. One commenter opposed this part of the section, stating that it was contrary to elemental principles of national jurisdiction to hold a U.S. citizen legally responsible for conducting an activity outside the United States that is a violation of U.S. law when the activity is consistent with the law of the foreign country.

As long as a U.S. citizen engages in trade in a CITES specimen outside the United States consistent with all the requirements of CITES and the foreign countries' domestic laws implementing CITES, it would not be a violation of U.S. law. Section 9 of the ESA makes clear that citizens of the United States have a responsibility to comply with all applicable CITES procedures when they engage in trade in CITES specimens outside the United States. Given that 171 countries are parties to CITES, a U.S. citizen trading a CITES specimen between two foreign countries is likely to need CITES documentation from one or both of those countries. Failure to obtain and present the required CITES documentation would be a violation of the ESA.

One commenter was concerned with our response in the 2006 proposed rule (71 FR 20167) to a previous comment that an applicant's failure to provide adequate documentation showing legality of a specimen, while not necessarily evidence that the specimen was traded contrary to CITES, might prevent us from making the required findings or being able to issue the necessary CITES documents for subsequent import, export, or re-export. The commenter suggested that the FWS establish procedures or describe the kinds of evidence we will accept in lieu of positive documentation.

We have not specified the type of documentation that an applicant must present in order for us to make necessary findings and issue the required documents because it is not possible to describe the full variety of information that could be used to show that a proposed activity is consistent with CITES requirements. In each case, the applicant must present enough information to allow the FWS to make the required determination, but the source of this information and the level of detail needed to make the finding will vary. See § 23.34 for more detail.

Personal and household effects (§ 23.15): Article VII(3) of the Treaty provides for the import, export, or re-export of specimens that are personal or household effects without CITES documents under certain circumstances. We clarified the current regulations (§ 23.13(d)) based on our experience in administering the Convention and Resolution Conf. 13.7. This section details the circumstances under which a person may travel with personal items of CITES wildlife and plants worn as clothing or accessories, or contained in accompanying luggage without CITES documents. It also details how a person may move personal items of CITES wildlife and plants from one country to another as part of a change of residence. We defined personal effect and household effect in § 23.5. We clarified that we consider qualifying tourist souvenirs to be personal effects.

Six commenters supported, in general, the clarification regarding personal and household effects, and several of those commenters supported specific provisions regarding Appendix-I and live specimens. They believed the clarification would help prevent abuses of the personal and household effects exemption. Three commenters, however, urged us to ease restrictions on individuals traveling with legally acquired CITES species. Although the commenters did not provide specific suggestions, we note that these regulations already provide an

exemption from CITES documentation for many individuals traveling with legally acquired CITES specimens. Another commenter believed that the trade in specimens under the exemption for personal and household effects creates a loophole that may adversely impact imperiled species. We disagree that this exemption has an adverse effect on listed taxa. As noted above, Article VII(3) provides for this exemption under certain circumstances, and the Parties have adopted additional guidelines through resolution.

In Resolution Conf. 13.7, the Parties agreed not to require CITES documents for personal or household effects of dead specimens, parts, products, or derivatives of Appendix-II species unless a Party requires a CITES document. Parties are to notify the Secretariat if they require CITES documents for personal and household effects, and the Secretariat will maintain a list on the CITES website (see § 23.7). Importing countries would generally assume that an export permit is not required if the exporting country had not notified the Secretariat otherwise. For species covered by the Lacey Act Amendments of 1981, however, the United States requires an export permit if such a permit is required by the other Party involved in the trade, even if the Party had not notified the Secretariat of the requirement. It is the responsibility of the importer to consult with the exporting country to determine whether an export permit is needed in such instances. One commenter believed the United States should impose stricter measures and require CITES documents for all personal and household effects. Such a requirement would be burdensome and provide little conservation value in most cases. Therefore, we declined to make a change based on this suggestion. However, these regulations allow for stricter measures under other U.S. laws (e.g., the ESA) for those species that warrant greater scrutiny. We believe this will allow for greater oversight when there appears to be a conservation value in doing so.

One commenter requested that we provide clarification regarding the restrictions imposed by the Lacey Act Amendments of 1981 and notify other CITES Parties of this requirement. The commenter also argued that the Lacey Act covered all foreign CITES species. We state in § 23.15(b) that the personal and household effects exemption does not apply if the country prohibits or restricts the import, export, or re-export of the item. In addition, we state that a personal or household effects shipment must be accompanied by any document required by a country under its stricter national measures. Both ofthese restrictions are imposed upon shipments because of our obligations under the Lacey Act Amendments of 1981 to provide support for other countries' stricter measures, and actions may be taken based upon information received from those countries about such restrictions.

For certain species, the Parties also agreed to numerical limits of specific types of specimens that qualify as personal and household effects. These specimens include sturgeon caviar, seahorses, crocodilian products, giant clam and queen conch shells, and cactus rainsticks. We note that if someone wants to import, export, or re-export more than the quantity designated in the regulations, the specimens no longer qualify for the personal effects exemption, and they must be accompanied by a valid CITES document for the entire quantity.

One commenter supported our efforts to enforce the quantity limitations and agreed that when the quantities exceed the limit, a CITES document is required for the entire quantity.

We exclude live wildlife and plants (including eggs and non-exempt seeds) and most Appendix-I specimens from the exemption. The drafting history of CITES, as well as significant debate that occurred at CoP4, clearly supports the view that this exemption applies only to dead items, such as clothing or jewelry, that are for personal use and are not for resale. In addition, few countries allow the import or export of Appendix-I specimens, including personal pets, without CITES documents. In the United States, many Appendix-I species are also listed under the ESA and other laws that do not provide an exemption for personal or household effects. Therefore, to assist in the enforcement of the Convention and to reduce the risk to Appendix-I species in the wild, and so not to create conflicts with U.S. laws, we require CITES documents for all Appendix-I specimens, except for certain worked items made from African elephant ivory (see § 23.15(f)). One commenter requested clarification as to whether Appendix-I species could qualify for the personal or household effects exemption, and if so, indicated that they should only be pre-Convention. Section 23.15(d)(2) states that no specimens from an Appendix-I species are included except for certain worked African elephant ivory. Section 23.15(f) on worked African elephant ivory states that the ivory must be pre-Convention.

We clarify that personal effects must be personally owned by the traveler for exclusively noncommercial purposes, the quantity and nature be reasonably appropriate for the purpose of the trip or stay, and either be worn as clothing or accessories or be part of accompanying personal baggage. We believe this requirement provides additional assistance to inspectors at the port when determining whether items are personal effects or are commercial items that a person is attempting to import without CITES documents under the exemption.

We have encountered a number of instances, both in the United States as well as abroad, when individuals have had souvenirs or other items seized when these items were mailed or shipped to them. Although these could be considered items for personal use, the CITES exemption does not apply unless the specimens accompany the individuals.

We clarify that household effects must be personally owned items that are part of a noncommercial household move. A shipment may contain only items acquired before the individual moves. It may not include items purchased, inherited, or otherwise acquired after the person has moved, even though the household goods have not yet been shipped.

We understand that sometimes it is not possible to ship household goods all at one time. Thus, we allow a person to make as many shipments as needed to accomplish the move as long as they occur within 1 year of the person's change in residence. A person is not precluded from shipping his or her household effects after 1 year, although such a shipment would require the appropriate CITES documents.

Two commenters believed that allowing 1 year after a move from one country to another to import or export household effects was too long, and allowed for potential abuse of the system. Based upon years of experience with CITES household moves, which have previously had no timeframe under U.S. regulations, we believe the 1–year timeframe is reasonably appropriate for completing the shipment of household goods to a new residence while preventing abuse of the exemption.

The AECA and ESA include stricter U.S. legislation concerning international trade in African elephant ivory. We allow U.S. residents to travel out of and return to the United States with pre-Convention worked African elephant ivory as personal or household effects under certain conditions, including that the items are registered. Registration consists of obtaining a U.S. CITES pre-Convention certificate, FWS Wildlife

Declaration (Form 3-177), or CBP Certificate of Registration for Personal Effects Taken Abroad (Form 4457). This exemption is limited to ivory already owned in the United States and is not a special opportunity for trade. Upon re-import, travelers must show records that the ivory is pre-Convention and that they registered it before leaving the United States. The exemption does not include items that are purchased while abroad or intended as gifts. We adopted the same definition of raw ivory as found in the special rule concerning African elephants in 50 CFR 17.40(e), which is similar to the definition found in Resolution Conf. 10.10 (Rev. CoP12). Individuals should contact the Management Authority in the country of their destination to find out about its requirements for African elephant ivory.

One commenter did not support this exemption because of concerns regarding the illegal trade in ivory. The commenter believed the exemption sets a bad precedent and should be deleted. We believe that the measures we have put in place, including registration of personally owned pre-Convention worked African elephant ivory before leaving the United States, provide sufficient safeguards.

Urine, feces, and synthetically derived DNA (§ 23.16): International trade in these specimens is exempt from CITES requirements under certain circumstances. We consider samples of urine and feces to be wildlife byproducts, rather than parts, products, or derivatives. We differentiate between DNA extracted directly from blood or tissue samples and synthetically derived DNA. DNA extracted directly from blood and tissue samples must comply with all CITES permitting requirements. We do not believe that trade in urine, feces, and synthetically derived DNA samples will adversely affect the conservation of, or effective regulation of trade in, CITES species and their parts, products, or derivatives.

At CoP12 and CoP13, there were proposals to annotate the Appendices to exempt these types of samples. The proposals were withdrawn. It should be noted, however, that some Parties do not agree that these specimens should be exempt from CITES controls. If a country requires CITES documents, we will process an application for these specimens.

Three commenters generally supported and two commenters generally opposed the exemption for urine, feces, and synthetically derived DNA in § 23.16. One commenter agreed that urine and feces should be exempt, but wanted to see a statement to ensure that collection methods for urine or feces posed no harm to listed species. Two commenters expressed concern about the exemption because of the potential need to capture and restrain listed species to collect samples. We have exempted urine and feces from CITES requirements and will therefore not require a statement on collection method. However, as noted in the 2006 proposed rule (71 FR 20167), we believe that it is important that researchers collect samples in a manner that does not harm the wildlife and complies with the laws of the country where the collection occurs. Researchers should contact the foreign Management Authority or other relevant wildlife authorities to obtain information on collection and export requirements prior to collection of urine or feces. Another commenter endorsed the exemption and described non-CITES restrictions placed on U.S. researchers regarding collection of these samples. The commenter added that such research oversight is also prevalent in other countries, often through legislation.

One commenter said that the United States should resist promulgating regulations that are more lenient than those agreed to by the Parties and noted that there is no resolution that provides for this exemption. In the 2006 proposed rule (71 FR 20167), we noted that the Parties have not agreed on whether urine, feces, or synthetically derived DNA are regulated by CITES. Where there is a lack of clarity or no agreement, the United States is left to make its own interpretation of the provisions of the Treaty. In our view, these are byproducts and are not recognizable parts or derivatives as defined in Article I of the Treaty. The commenter was also concerned that this exemption could lead to illegal trade in non-synthetic DNA labeled as synthetically derived DNA. We note that this exemption reflects a practice of the FWS that has been in effect since 1994. We have received no information to indicate that this practice has led to an increase in illegal trade in falsely declared DNA, nor do we expect this to occur in the future.

One commenter asked whether ambergris was covered under the provisions of either CITES or the MMPA. Because it is a byproduct, we do not consider ambergris to be covered by CITES provisions. The applicability of MMPA provisions to trade in ambergris is outside the scope of this rule.

Diplomats and other customs-exempt persons (§ 23.17): CITES Decision 9.15 urges the Parties to remind their diplomatic missions, their delegates in foreign countries, and their troops serving under the flag of the United Nations that they are not exempt from the provisions of the Convention. In these regulations we remind all persons who receive duty-free or inspection exemption privileges that CITES specimens traded internationally must meet the requirements of CITES and these regulations. One commenter strongly supported the requirement for CITES documentation even if a person receives duty-free or inspection waiver privileges. The commenter further emphasized that U.S. officials have the legal authority to confiscate specimens of CITES species if a diplomat attempts to import or export them, or transit through the United States with them, without appropriate documentation.

Required CITES documents (§§ 23.18–23.20): Articles III, IV, and V of the Treaty outline the types of documents that must accompany Appendix-I, -II, or -III specimens in international trade. Article VII and Article XIV of the Treaty recognize exemptions for certain specimens, such as those that qualify as pre-Convention, bred in captivity, or artificially propagated. Generally, these specimens must be accompanied by CITES exemption documents. The regulations remind people who trade in wildlife and plants to check with the Management Authorities of all countries concerned to determine their requirements before importing, introducing from the sea, exporting, or re-exporting CITES specimens.

We organized the information on what types of CITES documents are required into two decision trees and two tables. The decision trees and tables should make it easier for importers and exporters to understand what type of document is needed for a shipment. They refer the user to the section in the regulations that explains the application procedures, general provisions, issuance and acceptance criteria, and conditions for each type of document. One commenter agreed with this approach and stated that the decision trees and tables in these sections were extremely useful.

One commenter supported the statement in § 23.20(f) that an introduction-from-the-sea certificate must be obtained before conducting the proposed activity and the clarification that international trade following introduction from the sea is considered an export, not a re-export.

Another commenter expressed concern that the document requirements for Appendix-III specimens that originate in a country other than the listing country are not clear. We have addressed this comment under the preamble discussion pertaining to certificates of origin (§ 23.38).

Export of Appendix-I wildlife (§ 23.18): The decision tree clarifies that international trade in Appendix-I wildlife may not be for commercial purposes when permits are issued under Article III of the Treaty. Article II of the Treaty states that Appendix-I specimens ''...must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.'' The Parties have agreed that Appendix-I wildlife specimens should not be traded for commercial purposes unless the specimens originated from a CITES-registered commercial breeding operation. In the past, the FWS has allowed commercial breeders of Appendix-I wildlife to export specimens that have been sold to individuals outside the United States provided that the Management Authority of the importing country can make a not-for-primarily-commercial-purposes finding and issues an import permit. After review of this type of trade, we do not believe that Article III of the Treaty was intended to allow such commercial trade. Thus, we no longer allow the use of Article III of the Treaty to export Appendix-I wildlife unless the export is for noncommercial purposes. We also allow the export of Appendix-I wildlife that qualifies for an exemption under Article VII(4) and (5) as bred in captivity only if the specimen was bred at a CITES-registered breeding operation or was bred for noncommercial purposes, respectively. Other captive-bred Appendix-I wildlife will be given a source code ''F,'' rather than a ''C,'' and the export will be allowed only if the export is for noncommercial purposes and an import permit has been granted.

One commenter thought that the use of the double negative in the decision tree for export of Appendix-I wildlife in § 23.18 leads the casual reader to assume that noncommercial trade is not allowed. The purpose of the decision tree is to walk the reader through the requirements for trading in Appendix-I specimens under different scenarios, and it is important to read it through in full.

Two commenters strongly supported the requirement that to qualify for an exemption under Article VII(4) and (5) as bred in captivity, the specimen must have been bred at a CITES-registered facility or bred for noncommercial purposes. However, one of these commenters questioned how the terms ''not primarily commercial'' and ''noncommercial purposes'' were used. See the discussion regarding the definition of ''commercial'' in § 23.5.

Reservations (§ 23.21): Articles XV, XVI, and XXIII of the Treaty allow a Party to take a reservation on a species listing in Appendix I, II, or III. Generally, a reserving Party is treated as a non-Party with respect to trade in the reserved species. Countries that choose not to recognize a listing and take a reservation may continue trading in the species without CITES documents with other Parties that have taken the same reservation or with non-Parties, provided such shipments do not transit a Party country. Trade with Parties that have not taken the same reservation requires CITES documents.

This section emphasizes what types of documents are required from Parties that have taken a reservation on a species listing. We incorporated Resolution Conf. 4.25, which recommends that, when a species is newly listed in Appendix I or is transferred from Appendix II to Appendix I, Parties that take a reservation issue a CITES document and treat the species as if it were listed in Appendix II, rather than not listed, when trading with other reserving Parties or non-Parties. This provision should promote the conservation of species listed in Appendix I because the reserving Party would continue to issue CITES documents based on legal acquisition and non-detriment findings, and report such trade in its annual report. We also incorporated Resolution Conf. 9.7 (Rev. CoP13), which clarifies the requirements in the Treaty that a shipment containing specimens of CITES species traded between non-Parties or reserving Parties or between a non-Party and a reserving Party must be accompanied by CITES documents if it transits a Party country before reaching its final destination.

We explain how a person can provide relevant information and request that the United States consider taking a reservation. Additionally, we note that if the United States entered a reservation to the listing of a species in Appendix I, we will require a CITES document that meets Appendix-II permit criteria for international trade in specimens of that species. To date, the United States has not taken a reservation. Entering a reservation would do very little to relieve importers in the United States from the need for foreign export permits because the Lacey Act Amendments of 1981 make it a Federal offense to import into the United States any animal taken, possessed, transported, or sold in violation of foreign conservation laws. If the foreign country has implemented CITES through its domestic legislation and has not taken a reservation with regard to the species, the United States would continue to require CITES documents as a condition of import. A reservation by the United States also would provide exporters in this county with little relief from the need for U.S. export documents. Unless the receiving country had entered the same reservation or was a non-Party, U.S. exporters would continue to be required to obtain CITES-comparable documents because the Parties have agreed to trade with non-Parties and reserving Parties only if they issue permits and certificates that substantially conform with CITES requirements and contain the required information outlined in Resolution Conf. 9.5 (Rev. CoP13).

One commenter argued that the United States should prohibit all trade in Appendix-I species involving non-Parties or Parties with a reservation if that trade involves a U.S. citizen or if the specimen is to be imported into, exported from, or otherwise transit a U.S. port. We believe that this comment is adequately addressed in the 2006 proposed rule (71 FR 20167), and refer the commenter to that document for further clarification.

In-transit (§ 23.22): Due to limited transportation routes and schedules, exporters and re-exporters may not always be able to ship specimens from one country directly to another without transshipping them through intermediary countries. Shipments of sample collections may transit a number of countries before returning to the originating country. Article VII(1) of the Treaty provides an exemption for specimens that are in transit through a country while the specimens remain under customs control. We define an in-transit shipment as the transshipment of any wildlife or plant through an intermediary country when the specimen remains under customs control and meets either the requirements of this section or the requirements in § 23.50 for sample collections covered by an ATA carnet. In-transit shipments, other than sample collections (§ 23.50), may stay in an intermediary country, including storage in a duty-free, bonded, or other kind of warehouse or a free-trade zone, only for the time necessary to transfer the specimens to the mode of transport used to continue to the final destination.

In 1983, the CoP recognized the potential for abuse of the in-transit provision, such as when importers claimed the exemption and delayed shipment of the transiting specimen while they found a buyer in a foreign country. In 1989, the CoP noted that, if valid CITES export documents were required to accompany shipments

through intermediary countries, Parties could discover illegal trade by drawing attention to undocumented shipments. The inspection of in-transit shipments was recommended in 1992. Resolution Conf. 9.7 (Rev. CoP13) consolidates the earlier resolutions concerning in-transit shipments.

These regulations reflect the recommendations of the CoP to prevent misuse of the in-transit exemption. A copy of the valid original document may be used for in-transit shipments. However, transshippers should be aware that, if shipments are not accompanied by an original CITES document, intermediary countries could delay movement of the shipment while they determine whether a copy is an accurate copy of the original valid document. If we have reason to question an accompanying copy, we will contact the Management Authorities in the countries of export or re-export and final destination.

The CITES document must designate the name of the importer in the country of final destination. The shipment must also be accompanied by a copy of a valid import permit for Appendix-I specimens, where required, and transportation routing documents that show that the shipment has been consigned to the importer listed on the CITES documents.

A shipment that contains specimens of CITES species protected under other U.S. regulations, such as migratory birds, bald and golden eagles, injurious wildlife, endangered or threatened species, or marine mammals, and arrives in the United States before continuing on to another country is considered an import and must meet all import requirements.

One commenter stated that the regulations should require a ''firmer control of original CITES documents by carriers.'' The commenter suggested that the carrier should permit the shipment to be held at the destination for no additional charge when the documents are lost by the carrier. The scope of these regulations does not address how carriers control shipping documents or the charges that are assessed by carriers for storage of shipments pending clearance. One commenter suggested that we include a statement that all in-transit wildlife shipments of CITES species must comply with IATA regulations. As stated in § 23.26, all shipments, including in-transit shipments, must meet the IATA requirements. Therefore, we believe it is unnecessary to restate that in-transit shipments must comply with the humane transport requirements.

Required information on CITES documents (§ 23.23): This section details what information must be included on CITES documents. It applies not only to documents issued by the United States, but also to those issued by other Parties and non-Parties. Article VI of the Treaty provides basic requirements for CITES documents for import, introduction from the sea, export, and re-export. At the first CoP, the Parties recognized the importance of having standardized documents. They also recognized that the process of developing the standards would be a continuous one. The resolution on permits and certificates has been revised at CoPs 2, 3, 7, 9, 10, 11, 12, and 13. The resulting comprehensive resolution (Resolution Conf. 12.3 (Rev. CoP13)) provides guidance on all aspects of CITES documents.

Two commenters had concerns regarding our response in the preamble to a comment stating that ''documents that do not contain the required information may be considered invalid and rejected by any Party.'' One commenter requested clarification of specifically what would trigger a rejection by the FWS, and the other commenter indicated that the statement was too ambiguous and left too much discretion to the port official. Section 23.23 of the rule details the information required on a permit, and § 23.26 provides guidance on when we consider a U.S. or foreign CITES document to be valid.

Most of the information in this section is presented in a series of tables, organized alphabetically by required information, code, or type of document. This format should help those shipping and receiving specimens to understand what information is needed on CITES documents. A number of commenters appreciated the inclusion of this section, and stated that it would provide a ''valuable addition to the regulated community.''

CITES forms (§ 23.23(b)): This section states that CITES documents issued by a Party must be on a form printed in one or more of the three working languages of CITES (English, French, or Spanish). One commenter stated that, to ensure that our customs and wildlife inspectors are able to understand all statements made on the face of a CITES document, we should require that all CITES documents for shipments coming into the United States be printed in English only. Similarly, the commenter stated that each Party should designate one of the three working languages in which all CITES documents accompanying shipments into that Party's country should be printed. While we agree that having English as the only language appearing on incoming documents would be easier for our inspectors, CITES allows for documents to be printed in any of the three working languages and we cannot regulate the activities of foreign countries through our domestic regulations.

Required information (§ 23.23(c)): One commenter raised a concern that, while the customs declaration label that is required on the outside of a container of CITES specimens moving from one registered scientific institution to another registered scientific institution (§ 23.48(e)(5)) may constitute a CITES document, it is unlike other CITES documents with regard to the information it must contain. We agree with the commenter that, like phytosanitary certificates, the customs declaration label must contain specific language and information that is not the same as what is required on other CITES documents. We have amended the language in § 23.23(c) to exclude these labels.

Bill of lading or air waybill (§ 23.23(c)(3)): Although a suggestion was made after we first proposed these regulations in 2000 to require that the air waybill or bill of lading information appear on the face of CITES documents, we declined to make this mandatory because the specific information is not always known at the time the CITES document is validated. One commenter on the 2006 proposed rule (71 FR 20167) supported this approach, agreeing that such information is not always available.

Dates (§ 23.23(c)(4)): Over the years, we have received many questions about the ''valid until'' date. In this final rule, we clarify that the validity of a document expires at midnight (local time at the place of presentation) on the date indicated on the document. All activities, including but not limited to transport and presentation for import, must be completed before that time. One commenter expressed a concern that, due to situations beyond an importer's control, such as delayed transport or prolonged customs procedures, shipments may not arrive prior to the expiration date of a document. The commenter argued that, if an importer allows a reasonable period of time for the shipment to arrive in the United States, the documents should be accepted regardless of the expiration date. We cannot accept this suggestion. The Treaty establishes the period of validity for some documents, and the Parties, through resolution, have established a specific time period for which other documents are valid. We strongly urge importers and exporters to

be aware of the expiration date of their documents and to request replacement documents if they do not believe that the shipment can be completed before the document expires.

Humane transport (§ 23.23(c)(7)): We require that CITES export and re-export documents for live wildlife contain a specific condition that the document is only valid if the transport complies with certain humane transport standards. One commenter indicated that three sections (§§ 23.23, 23.26, 23.36) do not contain the same language with respect to humane transport. The commenter suggested the language used in § 23.36 should be used in all sections because it reiterates CITES language. We declined to make a change based on this suggestion because each section has a different purpose and requires different language. Section 23.23 provides the wording that must be included on a CITES document, § 23.26 lays out the condition for acceptance of a shipment, and § 23.36 provides the criteria for issuance of a permit.

We do, however, make a change to §23.23(c)(7) to incorporate by reference CITES's *Guidelines for transport and preparation for shipment of live wild animals and plants*. We inadvertently omitted this necessary incorporation by reference in our proposed rule, and we are correcting that omission in this final rule.

Identification of specimen (§23.23(c)(8)): We require that the CITES document accompanying a shipment contain information on any unique number or mark that is used to identify a specimen in that shipment. If the specimen has a microchip, the specific information concerning the code, trademark of the transponder manufacturer, and location of the chip must be on the CITES document, and if necessary, we may ask the importer, exporter, or re-exporter to have the equipment on hand to read the microchip at the time of import, export, or re-export. One commenter supported the provision that an importer or exporter must provide equipment to read a microchip, if requested. Another commenter did not support this approach and argued that the FWS should provide any required equipment. This commenter also did not believe that we should require that unique markings or microchip numbers be identified on the face of the CITES documents. The commenter thought this requirement would be burdensome to exporters that use microchips, whereas those exporters who do not use microchips would not have the same documentation burden. On an application for a CITES document, the applicant is asked to identify the specimens to be imported or exported. If the applicant uses a unique mark or microchip as a form of identification, we will use that as a means of identifying the specimen. Because a CITES document is issued for specific specimens, the use of identification marks or microchips ensures that the specimens identified in the application are the specimens presented at the time of import or export. Requiring that the unique marks or microchips be identified on the face of the CITES document allows for such identification. With regard to the FWS purchasing microchip readers, there currently is no industry standard for microchip readers and the cost to purchase every type for each wildlife inspection station would be prohibitive.

Purpose of transaction (§ 23.23(c)(11)): Resolution Conf. 12.3 (Rev. CoP13) lists standard transaction codes that are to be used on documents. These are the same codes used by Parties in their CITES annual reports. One commenter expressed confusion over the fact that the regulatory language at § 23.23(c)(11) uses the words ''if possible'' and therefore allows for the possibility that the purpose of the transaction may not appear on the face of a CITES document. We have amended the text to remove the ambiguity and to clarify that the purpose of the transaction must be identified on the face of the CITES document, either through use of one of the purpose of transaction codes in § 23.23(d) or through a written description.

Quantity (§ 23.23(c)(12)): We require that standardized units are used on all documents. The unit of measurement should be appropriate for the type of specimen and agree with the preferred or alternative unit to be used in the CITES annual report, if possible. The unit should be in metric measurement. If weight is given, it is important to provide the weight of the specimen, not the packing material. To monitor trade effectively, we need records on quantities that accurately reflect the volume of that trade.

One commenter agreed with the requirement that appropriate units be used on documents. However, the commenter believed that we should include a table of all of the units accepted by the Parties. We decline to accept this comment since the accepted units, which are identified by species or commodity, are too numerous to list. The accepted units are identified in the annual report format guidelines that are available on the CITES website or from us (see § 23.7).

Signature (§ 23.23(c)(16)): We require that the signatures of individuals authorized to sign CITES documents for a Management Authority be on file with the Secretariat. This requirement will help us determine if a document is valid and avoid delays in the clearance of shipments. One commenter believed that this requirement would be impractical. We disagree and note that this is not a new requirement. Resolution Conf. 12.3 (Rev. CoP13) recommends that Parties communicate to the Secretariat the names of the persons empowered to sign CITES documents and submit examples of their signatures. The FWS provides this information to the Secretariat for documents issued by the United States and verifies signatures with the Secretariat when questions arise about the validity of foreign documents.

Validation (§ 23.23(c)(21)): We require CITES documents to indicate the actual quantity exported or re-exported, whether the shipment is physically inspected upon export or not. One commenter expressed concerns that this section requires a CITES permit to be validated prior to leaving the country; otherwise it is not considered a valid permit. The commenter stated that the majority of countries do not validate their export permits and that this will become an enforcement burden to the wildlife inspection program to either re-export the shipment for lack of validation or seize the item(s). The commenter questioned if there is a plan to notify all CITES Parties of this new requirement to lessen the burden. We are aware of the lack of implementation of this CITES requirement by some countries, and plan to focus outreach efforts on this issue before the rule enters into effect. However, we are also aware that receipt of a CITES document without validation is not necessarily due to an exporting or re-exporting country having chosen not to validate, but may be because these shipments have evaded export controls. The lack of validation is quite often a violation of the exporting or re-exporting country's CITES laws, and we are committed to ensuring that shipments of CITES species are legally traded.

One commenter had concerns that the FWS would seize specimens if the authorized quantity had been changed without the validation stamp. The commenter suggested that, if a mark-out occurs and a new quantity is written by the Management Authority of the exporting country, the quantity should be verified through a physical inspection by the FWS without action taken against the importer. We disagree with this comment. If any alteration of

the CITES document occurs, this must be identified by the stamp and signature of a person authorized to sign CITES documents for the issuing Management Authority or the document is considered invalid. Without the stamp and signature verifying the originator of the changes, we can only assume such changes were not authorized, and we must take appropriate action.

One commenter raised a concern about requiring validation or certification of a customs declaration label used to identify specimens being moved between registered scientific institutions. We have revised this section to exclude these labels from the validation requirement.

Additional information (§ 23.23(e)): The table in paragraph (e) provides details on additional information that is required for specific types of documents, such as an annex or certificate of origin. Some documents require additional information because of the type of transaction, the specimen involved, or special provisions, such as quotas. One commenter expressed concern over how quotas are handled by the Parties and believed that this section should include additional language that would provide greater control over quotas. Although we recognize that the Parties are currently evaluating the uses of quotas, this section was not intended to address those concerns. This section provides the additional language required on CITES documents when the specimens identified on the document fall under an established quota. Therefore, we have not made the changes to this section requested by the commenter.

Phytosanitary certificates (§ 23.23(f)): CITES allows phytosanitary certificates to be used in lieu of CITES certificates to export certain artificially propagated plants under specific circumstances. At this time, we do not allow the use of phytosanitary certificates in lieu of CITES certificates for export of plants artificially propagated in the United States. One commenter believed there was a contradiction in this last statement. To clarify, although the United States does not issue phytosanitary certificates in lieu of CITES certificates, we will accept them from other Parties that have issued such documents, provided the phytosanitary certificate was properly issued and meets the requirements set out in this section.

Source of the specimen (§ 23.24): The source of a specimen is needed by Management and Scientific Authorities to make the findings required to issue CITES documents and is an important component in analyzing data and monitoring trade. We provide a list of standardized codes that Management Authorities use on CITES documents to identify the source of the specimen. In addition, we provide the definition for each code, and explain that the source code ''O'' for pre-Convention specimens should be used in conjunction with another source code. The U.S. Management Authority will determine the appropriate code to use when issuing a document, based on information provided in an application.

We often receive questions about the difference between the source codes ''C'' and ''F.'' Wildlife bred in captivity can be given the source code ''C'' and traded under an Article-VII exemption certificate only if the specimen meets the requirements adopted by the CoP for bred in captivity (see § 23.63). In addition, for Appendix-I wildlife, the specimen must have been bred for noncommercial purposes. If a specimen does not meet these criteria, it is assigned the source code ''F'' and requires CITES documents under Articles III, IV, or V of the Treaty. For export of Appendix-I wildlife, see the discussion in the preamble for § 23.18.

Two commenters expressed concern that use of the source code ''F'' for Appendix-I specimens that were commercially bred at a facility that was not registered with the CITES Secretariat would negatively impact their commercial operations. As discussed further in § 23.46, specimens that are produced for commercial purposes at a registered commercial breeding operation are afforded a specific exemption under Article VII(4) of the Treaty. These specimens are given the source code ''D'' on CITES documents. If a commercial breeding operation for Appendix-I species does not meet the requirements set out in § 23.46 to be registered with the CITES Secretariat, its specimens would not be eligible for the exemption under Article VII(4), and therefore any international trade of such specimens would be subject to the provisions of Article III of the Treaty.

Additional information required on non-Party documents (§ 23.25): This section provides the additional information that is required on non-Party documents. Article X of the Treaty allows a Party to accept documentation from a non-Party if it is issued by a competent authority and substantially conforms to the requirements of CITES. Because the Parties were concerned that the trade of CITES specimens through non-Parties might jeopardize the effectiveness of the Convention, they adopted Resolution Conf. 9.5 (Rev. CoP13). This resolution recommends that Parties accept documents from non-Parties only if they contain certain basic information, including certifications that a competent authority has made the findings required under Articles III, IV, or V of the Treaty. Therefore, we have incorporated the requirements of Resolution Conf. 9.5 (Rev. CoP13) on trade with non-Parties and Resolution Conf. 12.3 (Rev. CoP13) on permits and certificates. One commenter expressed concern that a certification from a non-Party that findings have been made in accordance with the Convention did not guarantee that findings were accurate or scientifically sound. We believe that the requirements in Resolution Conf. 9.5 (Rev. CoP13) and Resolution Conf. 12.3 (Rev. CoP13) are sufficient to ensure that trade with non-Parties is conducted in accordance with CITES. As noted elsewhere in this rule, if we have concerns regarding a CITES document issued by another country, we will investigate the situation further.

Valid CITES documents (§ 23.26): Article VIII of the Treaty outlines measures that Parties shall take to enforce the provisions of the Convention. Resolutions Conf. 9.9, 11.3 (Rev.CoP13), and 12.3 (Rev. CoP13) further detail these measures. For CITES to be effective, shipments must be accompanied by valid CITES documents issued by the appropriate authority and must meet all conditions of those documents. Each Party must have border controls for the inspection and validation of CITES documents. To ensure that specimens traded in violation of CITES do not re-enter illegal trade, Parties are urged to consider seizure of specimens, rather than refusal of entry of the shipment. Parties are encouraged to cooperate with other Parties, the Secretariat, and international enforcement organizations to further effective enforcement of the Treaty and provide protection to CITES species.

One commenter stated that the FWS should impose rules that make it clear that a CITES shipment not accompanied by the required CITES documents would be deemed illegal and disposed of pursuant to the FWS laws and policies with all costs borne by the importer, exporter, or re-exporter. We believe the rule clearly identifies the CITES prohibitions. The commenter further stated that if such a rule is not imposed, the FWS should require that countries issuing permits for shipments to the United States should submit electronic copies of the documents to ensure that a record of all trade is available. We disagree with this suggestion because such a requirement has not been agreed upon by the CoP

and would be overly burdensome for both the United States and other CITES Parties.

We included this section in the regulations to outline what requirements must be met for CITES documents to be considered valid. Several commenters objected to our reviewing the legal and scientific bases for a CITES document issued by another country, noting that we should accept a document if it is not procured by fraud and meets Article VI of the Treaty. One commenter argued that if we had a dispute with a country about a permit we should address our concerns to that country, and that the Convention does not give us the authority to refuse entry of shipments or reject permits in the absence of fraud or falsification of the permit.

We have the authority to question any shipment and its accompanying documents if the surrounding facts indicate a potential violation or create a reasonable suspicion of a violation. Section 10(g) of the ESA places the burden on a permittee to prove that the document was valid and in force at the time of entry into the United States. Foreign countries have the same discretion to inquire about documents we have issued. In addition, violations of CITES consist of more than fraud or falsified documents, and the Treaty requires Parties to penalize trade in, and possession of, specimens traded contrary to the Convention. As decided by the United States District Court for the District of Columbia in *Castlewood Products* v. *Norton* (Apr. 16, 2003), and affirmed by the Court of Appeals for the District of Columbia Circuit (Apr. 30, 2004), the role of all CITES Parties is to ensure that international trade in CITES specimens meets the provisions of the Convention, and the Government has the authority to decline to accept export permits at face value when reason is shown to doubt their validity. We note that the United States receives thousands of CITES shipments annually for which CITES documents are accepted as issued. We focus our verification efforts on those shipments and CITES documents for which the available information indicates a problem may exist.

One commenter believed that the FWS relies too heavily on the assumption that an exporting or re-exporting country is issuing accurate and scientifically defensible non-detriment findings. The commenter argued that the FWS must mandate import permits for all Appendix-I and Appendix-II wildlife or mandate internal reviewof export permits to make concurrence determinations, with no exceptions. The commenter also stated that the regulations should set specific requirements with which foreign Scientific and Management Authorities must comply when completing and issuing their findings. The imposition of a CITES import permit requirement for Appendix-II wildlife and of specific criteria for other countries to use in making their non-detriment findings goes beyond what is required under the Treaty. We have full authority to question a non-detriment finding when we have reason for concern. Requiring import permits for Appendix-II specimens would add significantly to our workload, but would not provide significant benefit.

Acceptance of CITES documents (§ 23.26(c)): We present the information on valid documents in a table arranged alphabetically by key phrase to assist importers and exporters. Most of the requirements are self-explanatory. However, we believe it would be helpful to discuss some in more detail.

Annual reports (§ 23.26(c)(2)), Convention implementation (§ 23.26(c)(5)), Legal acquisition (§ 23.26(c)(9)), and Non-detriment (§ 23.26(c)(12)): Three commenters urged us to include regulatory provisions to implement recommended trade suspensions. When the Standing Committee or the CoP recommends a temporary trade suspension, based on the results of the Review of Significant Trade, non-submission of annual reports, the status of adequate national legislation, or ongoing enforcement or implementation problems, Parties are informed of the decision through a Notification to the Parties issued by the Secretariat. All three commenters indicated that temporary suspensions are a valuable tool for ensuring compliance by CITES countries. Two commenters stated that implementation of CITES trade suspensions is a responsibility of the United States in its role as a major importer of CITES species, and one commenter urged regulatory language requiring immediate implementation of CITES trade suspensions. One commenter also suggested that we add a specific key phrase to § 23.26(c) for CITES trade suspensions.

While we believe the regulations as proposed allow us to implement any temporary suspensions of trade, we agree that adding language to § 23.26(c) will provide useful clarification for the public. CITES trade suspensions are based on failure to comply with basic Treaty requirements, and we realize that the basic Treaty requirements are scattered throughout many sections of the regulations. Therefore, to provide clarity, we have added four additional key phrases to § 23.26(c), annual reports, Convention implementation, legal acquisition, and non-detriment, as conditions that must be met before we consider a CITES document valid. The addition of these key phrases also ensures continuity with § 23.26(d) which outlines when we might verify a CITES document with the Secretariat or a foreign Management Authority. Although we indicate that these key phrases form the basis for acceptance of CITES documents, in addition to requirements in other sections, we will not generally question findings made by a Party for each individual shipment. We seek additional information where there is reason to question a shipment or a pattern of trade.

Management Authority and Scientific Authority (§ 23.26(c)(10)): One commenter supported the requirement that non-Parties designate Management and Scientific Authorities.

Quotas (§ 23.26(c)(14)): Quotas may be established voluntarily by Parties, adopted by the CoP through a resolution or proposal to amend Appendix I or II, or put into place through the Review of Significant Trade in Appendix-II species (Resolution Conf. 12.8 (Rev. CoP13). The Secretariat notifies the Parties of quotas each year, and we require that, for a given species, the quantity exported not exceed the quota. One commenter agreed with this requirement.

Ranched specimen: We received one comment related to a provision that appeared in the 2000 proposed rule (65 FR 26664) regarding not allowing international trade in ranched specimens involving non-Parties or Parties with a reservation on a species downlisted from Appendix I to Appendix II subject to ranching. Resolution Conf. 10.18 included language addressing this potential trade restriction. However, Resolution Conf. 11.16, which replaced Resolution Conf. 10.18, does not include this provision. Since the Parties excluded this provision when revising the ranching resolution, we did not include the restriction in this rule.

Shipment contents (§ 23.26(c)(18)): This paragraph specifies that the contents of the shipment must match the description of specimens on the CITES document and that the shipper may not substitute a new specimen to replace the one authorized. One commenter believed it was reasonable to allow a scientist who had obtained a permit for several specimens of a particular species to substitute different specimens of the same species without having to amend the permit. We

disagree. Findings are made based on information provided by the applicant for specific specimens, and therefore the specimens in a shipment must correspond to what was authorized.

Verification of CITES documents (§ 23.26(d)): This paragraph outlines the situations when we may request verification of documents from the Secretariat or the Management Authority of any country involved in the shipment. They include instances when we have reasonable grounds to believe a document is not valid or authentic.

Verification of CITES documents can be a lengthy process and depends on the issue, the means of communication, and the cooperation of the countries involved. Failure by a country to respond through normal channels of communication or failure to provide sufficient information to determine validity of documents may result in refusal of a shipment.

We rely on Parties and non-Parties to make appropriate findings, and we seek additional information only when we have a specific reason to do so. The Plants and Animals Committees, through the Review of Significant Trade process, regularly evaluate whether Parties are properly making non-detriment findings. Four commenters questioned why we both rely on Parties and non-Parties to make appropriate findings and also allow the Animals and Plants Committees to regularly evaluate whether Parties are properly making non-detriment findings. The commenters suggested that we delegate the process to the Committees. We wish to clarify that Parties and non-Parties are required under CITES to make legal acquisition and non-detriment findings for the CITES documents they issue. Although the Plants and Animals Committees regularly evaluate whether Parties are properly making non-detriment findings, this is only done for selected species determined to be subject to significant levels of trade. Such evaluations are done at the species level, usually range-wide, not for individual permits, and not at the specific request of a country. Individual permit findings cannot possibly be made by the Plants and Animals Committees, which generally meet only annually. We may request information on non-detriment findings made by other countries, including the underlying basis for quotas established by Parties, when we have a question regarding a shipment or a pattern of trade.

Several commenters indicated that if the United States questions a non-detriment finding there should be official notice to the public and the regulated community before a contrary determination is made. Although we encourage the public to provide relevant information if they have concerns about a finding made for a particular shipment, we decline to add a requirement that we solicit public comment whenever we have reason to question a non-detriment finding. We believe it is unnecessary and would undermine any timely and appropriate enforcement action that may be warranted.

One commenter strongly supported the regulations regarding verification of documents and noted that the issuance of a permit without making the relevant findings is inconsistent with Articles III and IV of the Treaty and therefore constitutes noncompliance. Another commenter recognized that the FWS has the authority to respond to violations, but believed that where a document is apparently valid, and not procured fraudulently, importers should have a reasonable expectation of a procedural standard for ''looking behind'' the document to determine its validity. We agree and have provided detailed information about when we would question the validity of a permit and seek verification. The commenter further stated that the failure to make adequate findings by ignoring, omitting, or failing to review relevant information is no different. The commenter argued that the regulation confirms the FWS' authority to look behind a facially valid permit. The commenter urged us to retain the proposed language in the final rule because it facilitates proper implementation of the Convention and the holding of the United States District Court for the District of Columbia in *Castlewood Products* v. *Norton* (Apr. 16, 2003).

One commenter argued that a CITES export permit must be regarded as the only authorization necessary to trade in CITES species. We agree that as signatories to CITES, the Parties have an obligation to issue export permits in accordance with the requirements of the Convention. However, we have the authority to question any shipment and its accompanying documents if the surrounding facts indicate a potential violation or create a reasonable suspicion of a violation. This position was affirmed by the United States District Court for the District of Columbia in *Castlewood* v. *Norton* and the Court of Appeals for the District of Columbia.

One commenter suggested we include in § 23.26(d)(5) a statement allowing us to request verification of a CITES document when we have reasonable grounds to believe that the specimen was produced from illegally acquired parental stock. We agree and have revised the regulations accordingly.

One commenter stated that the verification process outlined in the 2006 proposed rule (71 FR 20167) would be grossly unfair to importers. We disagree. These regulations provide a greatly expanded explanation of what CITES documents are required for trade, the information that must be contained on a CITES document, when we consider a document valid, and what importers should present at the port of entry. We believe that this section will assist the regulated public in determining what they must do to comply with CITES if they wish to import or export CITES species.

Presentation of CITES documents at the port (§ 23.27): Inspecting officials at the ports of exit and entry must verify that shipments are accompanied by valid CITES documents and take enforcement action when shipments do not comply with CITES. To help importers and exporters, we provide a table outlining the type of U.S. and foreign documents they must present for validation or certification, or that they must surrender, when importing, introducing from the sea, exporting, or re-exporting CITES species.

One commenter made a general statement that we should modify these regulations to reflect reality and allow uniform application of the rules, in particular with respect to the validation and clearance process. We believe the regulations governing the CITES approval and validation process are appropriate as written. Article VIII of the Treaty requires the Parties to establish an inspection process that takes place at the ports of exit and entry to ensure that wildlife shipments are in compliance with CITES. The validation process is an important component of CITES that enables U.S. inspection authorities to confirm the authenticity of permits and ensure that wildlife shipments were legally shipped from the exporting country. Such determinations are needed to ensure the proper enforcement of U.S. laws and regulations. Specific problems with clearance procedures in a foreign country should be addressed to the appropriate Management Authority. One commenter supported our clarification in the 2006 proposed rule (71 FR 20167) that CITES documents for wildlife in personal accompanying baggage should be submitted as soon as possible to the FWS if Customs or Agriculture officials fail to collect the documents at the time of arrival of the passenger.

One commenter correctly noted that the documentation that accompanies shipments of CITES specimens moving between registered scientific institutions is not processed at the port in the same manner as other CITES documents. We have removed the registered scientific institution CITES label from the table in § 23.27(b) and added a new paragraph (§ 23.27(d)) to describe the port requirements for such shipments. In addition, we inadvertently omitted the process for presenting phytosanitary certificates for shipments of artificially propagated plants and have corrected that by adding the necessary language to the table in § 23.27(c).

What Are the Changes to Subpart C of 50 CFR Part 23—Application Procedures, Criteria, and Conditions?

This subpart provides information on how to apply for a U.S. CITES document. It also contains general provisions and criteria that apply to both U.S. and foreign CITES documents.

Application procedures (§ 23.32): This section gives a general overview of the application process for U.S. CITES documents. Much of the information that appears in this section also appears in 50 CFR 13, General Permit Procedures, and is repeated here for the convenience of the regulated public. One commenter appreciated this reiteration of the application process for CITES documents. A number of CITES species are protected under other laws or treaties that we implement. If appropriate, we will accept one application if the applicant provides the information needed under all relevant regulations. An applicant should review the issuance criteria for all relevant regulations when preparing an application to ensure he or she understands the kinds of information we need. This review will help the applicant submit a more complete application and prevent delays in processing.

When we review an application, we decide whether the requirements of an exemption document under Article VII of the Treaty can be met or whether we need to process the application under the standard CITES requirements of Articles III, IV, or V (see §§ 23.35–23.39). If we find that the application is incomplete, we will contact the applicant for additional information. If the applicant does not respond to our request within 45 days, we will abandon the file. We will not re-open the application if the applicant sends the additional information at a later date. The applicant may, however, submit a new application, including any relevant application fees, if he or she still wants to pursue obtaining a permit.

One commenter disapproved of our intent in § 23.32(f)(2) to abandon any application after 45 days when the applicant has not responded to our request for additional information and of the fact that we will not re-open an application file once it has been abandoned. This procedure is not new. Part 13 of this subchapter identifies the process for abandoned application files, and it is repeated in this section for emphasis. We receive over 6,000 permit applications annually, and we work closely with applicants to avoid the need to abandon any application file. In the past, we have received requests to re-open files months, and even years, after a file has been abandoned. Such requests are burdensome, and we have found that it is more efficient to create a new file. As a result, once abandoned we will not re-open an application file.

Decisions on applications (§ 23.33): This section explains the procedures we follow in making a decision on an application. When an application is complete, we review the information under all applicable issuance criteria, including 50 CFR part 13, regulations under other wildlife and plant laws, and the CITES regulations. We may consult with outside experts, scientists, and staff within the Federal Government, State and tribal agencies, the Secretariat, or foreign Management or Scientific Authorities before we make our findings. The burden of proof in establishing that the issuance criteria are met lies with the applicant. We can issue a CITES document only if we are satisfied that all criteria specific to the proposed activity are met.

One commenter believed that we were inconsistent when we stated in the 2006 proposed rule (71 FR 20167) that we may consult with outside experts and others before making required findings, yet we also stated that we rely on Parties or non-Parties to make appropriate findings and would seek additional information only when we have a specific reason to do so (§ 23.26(d)). We believe that the commenter misunderstood our point in this section with regard to consultation with outside experts. We may consult with outside experts to assist us in making our required findings. This is separate from the issue of whether or not we will accept the findings made by a foreign CITES authority.

One commenter was concerned that the burden of proof is on the applicant to establish that the issuance criteria are met. The commenter noted that the FWS is more likely to have access to certain information than the applicant (e.g., biological status of the species). While it is true that in some cases we may have access to more information than many applicants, we do not believe that it is the burden of the government to obtain the information necessary to prove that the issuance criteria have been met. We inform the applicant of the basis of any denial decision and indicate what information is lacking. If the missing information is difficult for an individual applicant to obtain (e.g., foreign government management plans), we will do our best to obtain such data during the course of reviewing an application. However, it is the applicant's responsibility to prove that he or she meets the issuance criteria.

We received several comments on the process for appeal when an application has been denied. We refer the commenters to the 2006 proposed rule (71 FR 20167), where we addressed this issue, and note that the general permit procedures in part 13 of this subchapter provide the process for review if an application is denied. The procedures in part 13 cover all applications processed by the FWS, including applications for activities under CITES.

Records (§ 23.34): This section provides examples of the kinds of records individuals and businesses may want to keep if they intend to trade in CITES species internationally. Although the applicant for a CITES document needs to provide sufficient information for us to make the legal acquisition finding, we base the amount of information we need on the risk that the specimen was illegally acquired. For example, we consider whether the specimen is a hybrid; is common in captivity in the United States; breeds or propagates readily; has little illegal trade; or is commonly imported. We give less scrutiny and require less information when there is a low risk that a specimen was illegally acquired and give more scrutiny and require more detailed information when the risk is greater.

One commenter was concerned with our response in the 2006 proposed rule (71 FR 20167) to a previous comment that an applicant's failure to provide adequate documentation showing legality of a specimen, while not necessarily evidence that the specimen was traded contrary to CITES, might prevent us from making the required findings or being able to issue the necessary CITES documents for subsequent import, export, or re-export. The commenter suggested that the FWS establish procedures or describe the kinds of evidence we will accept in lieu of positive documentation.

We have not specified the type of documentation that an applicant must present in order for us to make necessary findings because it is not possible to describe the full range of information an applicant could use to show that their activity is consistent with CITES requirements. In each case, the applicant must present enough information to allow the FWS to make the required determinations, but the source of this information and the level of detail needed to make the findings will vary.

One commenter was concerned that an importer might be unable to show proof of legal import because the documents were retained by CBP and not forwarded to the FWS. The retention of copies by the importer at the time of import is separate from whether CBP transfers paperwork for follow-up investigation or storage by the FWS. Commercial importers must retain copies of documents for their files. Noncommercial importers are encouraged to retain copies of any documents submitted to the government for clearance as an ordinary part of the process whether or not they intend to submit applications in the future. All importers should also be aware that there are recordkeeping obligations under customs laws (19 U.S.C. 1508 and 1509) and customs regulations (19 CFR part 163).

General requirements for standard CITES documents (§§ 23.35–23.39): The basic requirements for U.S. and foreign CITES documents have not changed since the Treaty took effect in 1975. We have designed U.S. application forms for specific activities and protection levels to make applications easier to complete and to clarify what information is needed. Each of these sections provides information to help an applicant determine which application form to use. The forms can be obtained from our website or requested by phone, mail, or e-mail (see § 23.7).

These sections list the issuance criteria for each type of document and reference the appropriate section for factors we consider in making a decision on certain criteria. The issuance criteria are based on the provisions of the Convention (Articles III, IV, V, and XIV) and resolutions, including Resolution Conf. 12.3 (Rev. CoP13) on permits and certificates.

Prior issuance of an import permit (§ 23.35(e)): Under Article III of the Treaty, before a Management Authority can issue an export permit for an Appendix-I specimen, it must be satisfied that an import permit has been issued for the specimen. However, some countries have stricter national measures that require the export permit to be issued before they can issue an import permit. Resolutions Conf. 10.14 (Rev. CoP13) and 10.15 (Rev. CoP12) recommend that this requirement may be satisfied when the Management Authority of the importing country has provided written assurance that an import permit will be issued. Thus, for the export of live and dead Appendix-I specimens and re-export of live Appendix-I specimens (as required by Article III of the Treaty), the issuance criteria can be met either by showing that the import permit has been issued or by providing confirmation from the Management Authority of the importing country that the import permit will be issued. For re-export of dead specimens, the Management Authority does not need to see the import permit before issuing a re-export certificate, but the shipment still must be accompanied by an import permit.

One commenter stated that we should require the Management Authority of the exporting country to acquire a copy of the import permit before issuing an export permit or re-export certificate. The commenter was concerned that, due either to limited resources or lack of interest, a country will not make the required findings if they know in advance that the importing country will allow the import. We believe that countries strive to fulfill the requirements of the Treaty to the best of their abilities and that it is unlikely that an importing country would issue an import permit based solely on the fact that the exporting country issued an export permit. The commenter also contended that allowing the importing country to provide a ''letter of intent'' or written assurance that an import permit will be issued will lead to situations where the import permit will not be issued by the time the import actually occurs, placing border officials in a difficult situation. It is the responsibility of the exporter to obtain all the necessary documents before engaging in international trade. We concur with Resolutions Conf. 10.14 (Rev. CoP13) and 10.15 (Rev. CoP12) that allowing importing countries to provide written assurance that an import permit will be issued provides a workable solution that allows the administrative needs of both the importing and exporting countries to be met. If the U.S. Management Authority receives a written confirmation that appears unusual or inappropriate, we will investigate the situation further.

Export permits (§ 23.36): To comply with Article II of the Treaty, the export of Appendix-I wildlife that qualifies for source code ''W'' or ''F'' must be for noncommercial purposes (see discussion in the preamble for § 23.18). This provision means that facilities that are commercially breeding Appendix-I wildlife must become registered under § 23.46 before they can export Appendix-I specimens. This does not affect the sale of specimens within the United States, nor does it preclude the export of specimens where the purpose is noncommercial, such as for science, conservation, or personal use.

Two commenters expressed their support for registering breeding facilities for Appendix-I wildlife and allowing the export of wildlife from these registered facilities for commercial purposes. However, one commenter thought that measures such as registering breeding facilities create loopholes and do not provide benefit to Appendix-I species in the wild. CITES allows for commercial trade in Appendix-I specimens from registered breeding operations, and we do not believe that this requirement creates a loophole. The commenter also wanted assurances that an Appendix-I specimen bred for noncommercial purposes (i.e., not from a registered breeding facility) would only be traded internationally for noncommercial purposes over its lifetime. We will not authorize commercial trade of an Appendix-I specimen that does not qualify for an exemption under which such trade would be allowed. Additionally, we expect that countries that are party to CITES will abide by the provisions of the Convention, however we do not have control over trade that does not involve the United States.

We address the exemption in Article XIV(4) and (5) for certain Appendix-II marine species protected under another treaty, convention, or international agreement that was in force on July 1, 1975 (the date of entry into force of CITES). Export of a marine specimen exempted under Article XIV requires a CITES certificate indicating that the specimen was taken in accordance with the provisions of the other treaty, convention, or international agreement. One commenter appreciated the clarification in § 23.36(d) of the requirements for CITES documents for certain marine specimens exempted under Article XIV(4) and (5).

We added a new application form to the table in (b) for export of caviar or meat from wild-caught sturgeon and paddlefish (Form 3-200-76). This form was developed after the 2006 proposed rule (71 FR 20167) was published.

Certificate of origin (§ 23.38): A certificate of origin allows the export of a specimen of a species listed in Appendix III when the specimen originated in a non-listing country. This

section provides specific information on the application form and issuance criteria for a certificate of origin.

One commenter expressed concern regarding documentation requirements for trade in Appendix-III specimens. While he believed that the requirements were clear for specimens originating in the listing country, he stated that there is no uniform format for certificates of origin, which results in considerable variation in these documents, with some countries no longer issuing any documents for the export of Appendix-III specimens. He also noted that acceptance of these documents by the United States varies at different ports of entry and asked that we ''formulate clear rules which reflect the ongoing customs and regulations of other countries.''

Sections 23.23 to 23.27 provide clear descriptions of the information requirements for CITES documents, including certificates of origin. These requirements implement the current resolution on permits and certificates, and therefore reflect what has been agreed by the CITES Parties. Some countries have taken reservations for certain Appendix-III species, and we refer the commenter to § 23.21 for an explanation of document requirements when a country has elected to take a reservation on an Appendix-III listing.

Introduction from the sea (§ 23.39): Article XIV(4) and (5) of the Treaty provide a limited exemption for certain Appendix-II species when a country is a party to another treaty, convention, or international agreement that protects the listed marine species and was in force on July 1, 1975 (the date of entry into force of CITES). For introductions from the sea, this exemption applies only to specimens that were harvested by a ship registered in the country of introduction that is also a party to the pre-existing treaty. This is in keeping with Article XIV(4) and with the intent of the provisions of Article IV of the Treaty. It also supports the CITES goal of exempting only those introductions from the sea that are certified as being in compliance with a pre-existing treaty by a party to that treaty who is competent to make such a certification. Should a commercially exploited marine species that is exempt under Article XIV be listed in the future, implementation details may need to be addressed at the time of listing.

One commenter was concerned that allowing the use of other treaties, conventions, or international agreements to exempt specimens from CITES requirements may reduce their overall protection by allowing trade that may not be permissible under CITES. He stated that the FWS should identify all such agreements in force on July 1, 1975, and provide an analysis comparing and contrasting requirements imposed by these other agreements in relationship to CITES requirements. We disagree. The exemption in Article XIV(4) and (5) for certain Appendix-II marine species is limited in scope and was purposely written into the Treaty to avoid conflicts with pre-existing treaties, conventions, and agreements. Changing or eliminating this exemption would require amending the Treaty, which we do not believe is practicable or warranted.

Another commenter believed that guidance was lacking on when an introduction-from-the- sea certificate is required. Introduction from the sea is defined in § 23.5, and § 23.20(f) and § 23.39 explain clearly that unless the specimen qualifies for an exemption under Article XIV(4) and (5), the introduction from the sea of an Appendix-I or -II specimen requires an introduction- from-the-sea certificate. Criteria for issuance and acceptance of introduction-from-the-sea certificates are provided in § 23.39.

Bred-in-captivity certificates (§ 23.41): This section implements Article VII(5) and allows us to issue a bred-in-captivity certificate for specimens of Appendix-I species bred for noncommercial purposes (see § 23.5) or traveling as part of an exhibition, and specimens of Appendix-II or -III species bred for any purpose. At CoP12, the Parties agreed that facilities that are breeding Appendix-I species for noncommercial purposes must be participating in a cooperative conservation program with one or more of the range countries for that species. We adopted this provision. If the breeding facility is not participating in a cooperative conservation program, specimens will be assigned the source code ''F'' and are not eligible for a bred-in-captivity certificate. Export of such Appendix-I specimens will be allowed only when the export is for noncommercial purposes (see the discussion in the preamble for § 23.18). We also adopted the recommendations of Resolution Conf. 10.16 (Rev.) for specimens bred in captivity (see § 23.63). Appendix-I wildlife that qualifies for a bred-in-captivity certificate does not need a CITES import permit.

One commenter asked if we could issue bred-in-captivity certificates for Appendix-II and -III specimens that are part of a traveling exhibition, or for Appendix-I specimens in foreign-based traveling exhibitions performing in the U.S. As stated above, such certificates may be issued for any purpose, including traveling exhibitions, for Appendix-II or -III specimens. However, we generally do not issue bred-in-captivity certificates for specimens in a traveling exhibition. Traveling exhibitions are addressed by Article VII(7) of the Treaty and we refer the commenter to the procedures for traveling exhibitions described in § 23.49. The same commenter asked whether we could issue a bred-in-captivity certificate to facilitate import of an Appendix-I specimen that had been bred for noncommercial purposes in a foreign country. A Party cannot issue a bred-in-captivity certificate for a specimen outside of its national jurisdiction.

The commenter also expressed concern that issuance of a bred-in-captivity certificate bypasses the requirements in Article III, IV, and V to make a legal acquisition finding and the requirements in Article III and IV to make a finding that the export would not be detrimental to the survival of the species. These findings are made through our adoption of the standard interpretation of the term ''bred in captivity'' in Resolution Conf. 10.16 (Rev.). We refer the commenter to § 23.63 on the procedures for evaluating the breeding stock from which the specimen was derived.

The Parties have agreed that facilities that are breeding Appendix-I species for noncommercial purposes must be participating in a cooperative conservation program with one or more range countries for the species. The commenter noted that we have not provided a specific definition of what constitutes a cooperative conservation program. We amended the definition in § 23.5 slightly to make it clear that the program must be conducted in cooperation with one or more of the range countries for the species. However, we defined ''cooperative conservation program'' in general terms because we did not want to limit what might be considered under such a program. These programs may include a wide variety of activities, and we cannot adequately address every variation in this rule. Instead, using our professional judgment and through communication with range countries and species experts, we will evaluate each breeding situation to determine if the activities being conducted constitute active participation in a cooperative conservation program.

The commenter also expressed concern that the issuance of bred-in-captivity certificates would facilitate fraudulent activities by providing a loophole for the international movement

of wild-caught specimens. We disagree. We believe that the procedures we use to review applications for bred-in-captivity certificates and our close coordination with law enforcement, both domestically and internationally, are a strong deterrent to such fraudulent activities.

General information on hybrids (§§ 23.42 and 23.43): At CoP2, the Parties recognized that it can be difficult to distinguish between purebred and hybrid specimens in trade. If hybrids were not subject to CITES controls, persons wishing to avoid the controls of CITES could falsely claim that the specimens in question were hybrids. Resolution Conf. 2.13 recommended that hybrids, even though not specifically listed in any of the Appendices, are subject to CITES if one or both parents are listed. The Parties agreed at CoP10 to treat plant hybrids differently from wildlife hybrids. Resolution Conf. 2.13 was repealed, and provisions for hybrids were placed in other resolutions.

Plant hybrids (§ 23.42): Resolution Conf. 11.11 (Rev. CoP13) contains provisions on trade in plant hybrids. Trade in plant hybrids must meet the requirements of CITES unless the Parties agree to exempt an Appendix-II or -III hybrid by a specific annotation to the Appendices (see § 23.92). Plant hybrids are subject to CITES controls if one or both parents are listed in the Appendices. If the hybrid includes two CITES species in its lineage, it is listed in the more restrictive Appendix of either parent, with Appendix I being the most restrictive.

Two commenters stated that plant hybrids should be exempt from CITES document requirements. See the general discussion of hybrids above for the basis of applying CITES requirements to hybrids of CITES species. The same commenters believed that the exemption for certain hybrids when the specimens are traded in shipments containing 20 or more plants of the same hybrid is unfair to small growers. This exemption was adopted by the Parties as a listing annotation for certain orchid species. The appropriateness of specific species listings and listing annotations is addressed by the CoP and is beyond the scope of these regulations.

Wildlife hybrids (§ 23.43): In Resolution Conf. 10.17 (Rev.), the Parties agreed that wildlife hybrids with one or more Appendix-I or -II specimens in their recent lineage are controlled under CITES. Therefore, in general, wildlife hybrids of CITES species must be accompanied by a CITES document, issued by the Management Authority of the country of export or re-export.

The Parties agreed to a limited exception for certain wildlife hybrids under specific conditions. When the hybrid specimen is a cross between a CITES species and a non-CITES species, and no purebred CITES specimen appears in the previous four generations of its ancestry, it is exempt from CITES requirements. A hybrid of species included in a higher-taxon listing, such as parrots, falcons, or sturgeons, would not be exempted under this provision because the crosses are generally between two CITES species within that higher-taxon listing. We expect that the wildlife hybrid exemption will apply only rarely.

A specimen that qualifies as an exempt wildlife hybrid does not require CITES documents. However, at the time of import, export, or re-export you must provide sufficient information to demonstrate to CITES border officials that your wildlife specimen contains no purebred CITES species in the previous four generations of its lineage, and you must follow the clearance requirements for wildlife in part 14 of this subchapter.

Initially, we had proposed that either a CITES document or an ''excluded hybrid letter,'' issued by a Management Authority, must accompany any exempt wildlife hybrid being imported into or exported from the United States. One commenter questioned how the United States could require that a CITES document or a letter accompany an exempt hybrid when other CITES Parties do not require such documentation. After further review, we have decided to eliminate this document requirement. However, as previously stated, individuals traveling with or shipping exempt wildlife hybrids should be aware that they must provide information to clearly demonstrate to border officials that the specimen qualifies as an exempt wildlife hybrid.

We received over 200 comments in support of this section as proposed. While not specifically stated in most of these comments, it was clear that the commenters were under the impression that Bengal cats, a hybrid cross between domestic cats and Asian leopard cats (*Prionailurus bengalensis*), would be automatically exempt from CITES document requirements. Although some Bengal cat specimens may qualify as exempt hybrids, if you cannot clearly demonstrate that your specimen meets the qualifications for the exemption, you must obtain a CITES document for international trade.

One commenter expressed a need for a clear definition of when an exotic specimen becomes domesticated. While we recognize the possible value of this comment, this rule is not intended to address that issue.

Some commenters stated that hybrid falcons should be exempt from CITES controls because international trade in such specimens has no impact on the conservation of wild raptor populations. Trade in hybrids is controlled by CITES because of the difficulty in distinguishing purebred and hybrid specimens. See the general discussion of hybrids above for the basis of applying CITES requirements to hybrids of CITES species.

Personally owned live wildlife (§ 23.44): Article VII(3) of the Treaty provides that, in some circumstances, the provisions of Articles III, IV, and V of the Treaty do not apply to specimens that are personal or household effects. As discussed previously, Parties have generally excluded live wildlife from this exception. However, in Resolution Conf. 10.20, the Parties agreed that personally owned, live wildlife that is registered by the Management Authority in the country where the owner usually resides may be moved internationally using a certificate of ownership, under specific conditions.

We have implemented this resolution, which should simplify the procedure for people who frequently travel internationally with companion animals or wildlife used in noncommercial competitions, such as falconry. The certificate of ownership acts like a passport, but can be issued only after agreement between the Management Authorities of the Parties concerned. The owner must accompany the specimen when crossing international borders, and the wildlife cannot be sold or otherwise transferred when traveling abroad.

Five commenters supported the idea of issuing certificates of ownership, or ''passports.'' One commenter, while supporting the concept, stated that the certificates should be called ''certificates of stewardship'' since wildlife should not be ''owned,'' but should only be held in ''trust.'' We decline to make a change based on this suggestion since the title of this CITES document was agreed upon by the Parties.

Seven other commenters also supported the issuance of certificates of ownership, but did not believe that the owners of birds covered under the MBTA should be required to notify us when their birds have died or been sold since they must report such events to their Regional Migratory Bird Management office via Form 3-186A. While we are working with the regional migratory bird offices to ensure quick and accurate exchange of information, we have not developed a reliable means

to share data that are submitted by permittees on Form 3-186A. As a result, and because of the different records management systems for handling information submitted by permittees and different uses of the data, it is necessary that both the Division of Migratory Bird Management and the U.S. Management Authority are notified of deaths or transfers. Many CITES ''passports'' are issued for bird species that are not covered by the MBTA, and therefore would not require the submission of information to a Regional Migratory Bird Management office. We require that all ''passport'' holders notify us of any change in the status of their personally owned live wildlife.

Two additional commenters supported the issuance of ''passports,'' but questioned the length of validity of such documents. Both commenters believed that certificates of ownership should be valid until the animal dies or has been transferred. They stated that a 3–year period of validity would create a burden on the permittee. The 3–year period of validity was agreed upon by the Parties and is specified in Resolution Conf. 12.3 (Rev.CoP13). We therefore cannot issue these certificates for longer than 3 years.

Two commenters believed that the process for obtaining certificates of ownership and for moving animals across international borders should be simplified. In particular, the commenters stated that the movement of CITES pets across the U.S.-Canadian border should not require clearance by an FWS Wildlife Inspector, but should be handled solely by CBP officials. While we strive to minimize any inconvenience at the port, this particular comment cannot be addressed by these regulations. The clearance process is addressed in 50 CFR 14, which is not being revised as part of this rulemaking.

Two commenters believed that the issuance of certificates of ownership, particularly for raptors, would facilitate the illegal movement of specimens that were not obtained legally. They did not think that the process under which these certificates are issued would allow for adequate control of specimens, particularly of Appendix-I species, since only the exporting country needs to issue a certificate. The applicant must provide adequate documentation to show that the specimen was legally obtained before a certificate of ownership can be issued. In addition, when applying for a certificate of ownership, the applicant must confirm that he or she does not intend to sell or transfer the specimen while outside of the United States. Finally, since border officials of both the exporting/re-exporting and the importing countries must inspect the wildlife and the accompanying certificate, fraudulent activity would be detected. We believe that this provides sufficient control of the trade in these specimens to minimize illegal activities.

One commenter stated that live specimens should not be considered personal or household effects. We agree and refer the commenter to the definitions of these terms in § 23.5. The commenter also suggested that § 23.44(d)(5) be amended to state that the applicant ''will not sell, donate, or transfer the wildlife while traveling internationally'' instead of ''does not intend to sell, donate, or transfer the wildlife while traveling internationally'' and that this restriction should also be expanded to limit sale, donation, or transfer within the applicant's usual country of residence. Section 23.44(d) lists criteria for the issuance and acceptance of certificates of ownership and indicates that an applicant must provide sufficient information for us to determine that he or she *does not intend* to sell or otherwise transfer the wildlife while traveling internationally (§ 23.44(d)(5)). Section 23.44(e) lists U.S. standard conditions for certificates of ownership, including § 23.44(e)(3), which states that the certificate holder ''*must not* sell, donate, or transfer the specimen while traveling internationally.'' Expansion of this restriction to cover activities within an applicant's country of residence is beyond the scope of CITES and these regulations.

Pre-Convention specimen (§ 23.45): Under Article VII(2) of the Treaty, a specimen acquired before the provisions of CITES applied to the species is exempt from Articles III, IV, and V of the Treaty when a Management Authority issues a certificate. Resolution Conf. 13.6 provides guidance on determining when a specimen is considered pre-Convention. One commenter supported the use of the date on which the species was first listed in the Appendices to determine the pre-Convention status of a specimen, as recommended in the resolution. We define the term ''pre-Convention'' in § 23.5 and clarify in this section the general provisions that apply to the acceptance and issuance of pre-Convention documents.

The pre-Convention status applies to the specimen, not to when it was possessed by the current owner. Before we can issue a pre-Convention certificate, the applicant must provide sufficient information for us to determine that the wildlife or plant (including parts, products, and derivatives) was removed from the wild or born or propagated in a controlled environment before the first date that CITES applied to the specimen. This information also is needed for products (such as manufactured items) or derivatives subsequently made from such specimens. If the specific acquisition date is unknown or cannot be proved, then the applicant should provide any subsequent and provable date on which the item was first possessed by a person.

Even antiques that are at least 100 years old that clearly qualify as pre-Convention must be accompanied by pre-Convention documents. The general import regulations for antiques under the ESA are found in 50 CFR part 14. Except in rare situations, we do not require a person to show the sequential ownership of pre-Convention specimens, including antiques. If a CITES species is also listed under the ESA and does not qualify under the ESA as an antique, we will ask for information on whether the specimen has been sold or offered for sale because an ESA species loses its pre-Act status when placed in commerce.

We no longer apply the definition of pre-Convention to cell lines whose originating line was established prior to the listing date of the species. These cell lines are continually growing and cells are harvested from growing cultures. Applicants who wish to export cell lines must comply with CITES requirements, and provide sufficient documentation of legal acquisition and the date when the cell line was established. Although most cell lines do not qualify as pre-Convention, they may qualify for other types of CITES exemption certificates.

One commenter expressed concern that international trade will be restricted if cell lines are not traded as pre-Convention specimens. The commenter also argued that our suggestion in the 2006 proposed rule (71 FR 20167) that these specimens may qualify for trade under another CITES exemption document, such as a bred-in-captivity certificate, would be confusing because it differs from the interpretation of other authorities. As discussed previously, the pre-Convention status applies to a specimen that was removed from the wild or born or propagated in a controlled environment before the first date that CITES applied to the specimen. Cell lines that are continually growing and being harvested would therefore not qualify for a pre-Convention certificate. We believe that this is an accurate interpretation of the Treaty requirements and disagree that it will result in a restriction of trade.

Based on our experience with this trade, we do not believe that shipping cell lines under another type of CITES document, other than a pre-Convention certificate, will be problematic for foreign CITES authorities or that it will create difficulties for the industry.

Registration of commercial breeding operations for Appendix-I species (§ 23.46): Article VII(4) of the Treaty provides that specimens of Appendix-I species bred for commercial purposes will be deemed to be specimens of species included in Appendix II for CITES document requirements. A Management Authority may grant an export permit or a re-export certificate without requiring the prior issuance of an import permit, thus allowing specimens that originate in a CITES-registered breeding operation to be traded commercially. The specimens are still listed in Appendix I and are not eligible for any exemption granted to an Appendix-II species or taxon, such as less restrictive provisions for personal and household effects.

The Parties recognize the potential abuse inherent in this exemption because it is difficult for inspectors to distinguish between specimens bred in captivity and those removed from the wild. They also recognize that captive breeding for both commercial and conservation purposes is increasing. These regulations implement Resolution Conf. 12.10 (Rev. CoP13) and establish application procedures to allow an operation to become registered for each Appendix-I species maintained at the operation. The registration criteria include whether the species qualifies as bred in captivity (see § 23.63).

Appendix-I wildlife from a registered breeding operation can be exported with an export permit under Article IV of the Treaty. An import permit is not required, and specimens can be used for primarily commercial purposes. To date, very few U.S. operations have chosen to complete the process of registering. Most U.S. commercial breeders are applying for permits under Article III of the Treaty. We will issue permits under Article III only in exceptional circumstances. This reflects the intent of CITES to prohibit trade in Appendix-I specimens for primarily commercial purposes when they do not qualify for an exemption to allow it. Thus, we encourage breeders to register their operations if they plan to trade in Appendix-I specimens internationally (see discussion in the preamble for § 23.18).

One commenter opposed the registration requirement for commercial captive-breeding operations for Appendix-I species because of the ongoing discussion among CITES Parties about which facilities should be registered, the conservation value of registration, and obstacles to registration. In addition, the commenter noted the refusal of the European Union to implement the registration requirement. Another commenter opposed our implementation of Resolution Conf. 12.10 (Rev. CoP13) because it would weaken the protection of Appendix-I species. The United States has always supported the registration system and worked with other Parties to craft the current language in the resolution. We recognize that certain Appendix-I species are widely bred in captivity to the second generation without the addition of wild stock. The registration system encourages the captive breeding of Appendix-I species, discourages take of specimens from the wild, may provide conservation benefits, and is the only mechanism by which such species can be traded commercially.

Several commenters argued that small falcon breeders should not be required to register. The Parties agreed, in Resolution Conf. 12.10 (Rev. CoP13), that the exemption in Article VII(4) should be implemented through the registration of operations breeding Appendix-I species for commercial purposes. Therefore, any breeding operation, regardless of size, that wishes to qualify for the exemption and engage in commercial international trade of Appendix-I species, must be registered.

One commenter suggested that § 23.46(d)(7) should include ''in the wild'' or ''*in situ*'' at the end of the sentence to clarify that any breeding operation for Appendix-I species should benefit *in situ* conservation. We decline to adopt this suggestion because we believe that both *in situ* and *ex situ* activities can contribute to improving the conservation status of wild populations. The commenter also requested that we list guidelines or provide examples of appropriate conservation activities. We have not included a list because meaningful conservation activities will vary by taxon.

Several commenters urged us to amend § 23.46(b)(12) to permit the take of wild breeding stock of Appendix-I birds by registered facilities to augment the captive population, as provided for in § 23.63 for noncommercial breeders. These birds would be used for maintaining genetic diversity and providing birds for conservation efforts, such as State reintroduction programs for peregrine falcons (*Falco peregrinus*). In the United States, take of wild specimens may be authorized with appropriate permits (e.g., State permits, Migratory Bird Treaty Act permits). However, under Article III(3)(c), wild stock may not be imported to augment the captive population of a registered commercial breeding operation, and we therefore decline to make a change based on this suggestion. We have amended § 23.46(d)(4) to clarify that, where the establishment of a commercial breeding operation for Appendix-I wildlife involves the removal of animals from the wild, it may only be allowed under exceptional circumstances and only for native species.

Three commenters opposed our decision not to publish the receipt of an application to register commercial breeding operations for Appendix-I species in the **Federal Register**, which would allow the public to comment. Another commenter suggested we publish the first application received for a species. As described in the 2006 proposed rule (71 FR 20167), there is no legal requirement to obtain public comments on CITES applications, we make determinations on whether specimens qualify as bred in captivity for other CITES documents without obtaining public comments, and further review is conducted by the CITES Secretariat and the CITES Parties. Publication in the **Federal Register** would result in delays in the registration process. Once the Secretariat makes the application available, the Parties have 90 days in which to comment. Thus, even without a public comment period within the United States, registration of an operation may take a minimum of several months. We acknowledge that members of the public will not have an opportunity to comment on the applications. However, we will consult outside experts if necessary, and we believe that the evaluation by the FWS, the Secretariat, and the Parties is sufficient to make a determination as to whether an operation qualifies to be registered.

One commenter expressed concern that registered captive-breeding operations could be used to launder illegal specimens and that the Service should develop strict regulations for identifying specimens bred at a registered operation. We believe that the criteria and oversight provided in § 23.46 and the marking requirements in § 23.56(a)(4) minimize the potential for laundering and appropriately implement Resolution Conf. 12.10 (Rev. CoP13).

Exporting Appendix-I plants commercially (§ 23.47): The Parties recognize that the artificial propagation of plants is essentially different from

captive breeding of wildlife and requires a different approach. Artificial propagation of native plants can provide an economic alternative to traditional agriculture in countries of origin. By making specimens readily available, artificial propagation may have a positive effect on the conservation of wild populations by reducing pressure from collection, provided the parental stock was legally obtained in a non-detrimental manner.

Article VII(4) of the Treaty provides that specimens of Appendix-I plants artificially propagated for commercial purposes will be deemed to be specimens of species included in Appendix II for CITES document requirements. Just as for wildlife in the previous section, this means that a Management Authority may grant an export permit without requiring the prior issuance of an import permit. The specimens are still listed in Appendix I, and they are not eligible for any exemption granted to an Appendix-II species or taxon.

Two commenters thought that a registration system should be provided for facilities that propagate Appendix-I plants, similar to the registration system for wildlife. This issue was addressed in the 2006 proposed rule (71 FR 20167). Although we recognize that there may be some advantages to developing a registration process, we have not incorporated such a process into the regulations due to the complex issues resulting from the decentralized system of regulating nurseries in the United States. Instead, we have reserved § 23.47(e) for nursery registration, because we will need to work with nurseries, other State and Federal regulators, and the interested public to develop regulations.

We continue to implement Article VII(4) of the Convention by reviewing a nursery's facilities during the application process and issuing CITES export permits with a source code ''D.'' This type of export permit indicates to other Parties that we have treated the nurseries as propagating Appendix-I plants for commercial purposes. No import permit is required under CITES for the trade of these specimens.

Registered scientific institutions (§ 23.48): Article VII(6) of the Treaty provides an exemption from strict CITES controls for preserved, dried, or embedded museum specimens, herbarium specimens, and live plant materials that carry an approved label. The exemption covers the noncommercial loan, donation, or exchange of these items between scientific institutions registered by each country's Management Authority. Resolution Conf. 11.15 (Rev. CoP12) recommends that Parties encourage their natural history museums and herbaria to inventory their holdings of rare and endangered species. This recommendation allows researchers to efficiently borrow specimens for study and reduce any potential adverse impacts that museum needs for research specimens can have on small populations of rare wildlife and plants.

This section incorporates the standards in the resolution for registration of scientific institutions. A scientist who wishes to use this exemption must be affiliated with a registered scientific institution. Specimens are to be acquired primarily for research that is to be reported in scientific publications, and no CITES specimens obtained through the use of this exemption may be used for commercial purposes. We clarify that offspring (i.e., cuttings, seeds, or propagules) may not be commercialized, including sale through a catalog or as a fund-raising effort, because the registration is for scientific purposes only.

Biological samples, including blood and tissue samples of preserved, frozen, dried, or embedded museum samples, herbarium specimens, or live plant material, that will be destroyed during analysis will be eligible for this exemption provided a portion of the sample is maintained and permanently recorded at a registered institution for future scientific reference. Because not all countries recognize these types of samples as being eligible to be traded under this exemption, registered scientific institutions should check with the foreign Management Authority before shipping such specimens under a scientific exchange certificate.

All specimens for which the exemption is being claimed must have been legally acquired. The specimens must have been permanently recorded by the sending registered institution before being shipped for exchange, donation, or loan for scientific research purposes. The Parties were concerned about possible abuse of the exemption by scientists who might collect specimens and directly export them without the permission of a registered institution in the exporting country. Thus, the registration criteria require the orderly handling and permanent recording of specimens, including the maintenance of permanent records for loans and transfers of specimens to other institutions. In addition, scientists may still need permits under other parts of this subchapter (see § 23.3).

We received two comments on this section. One commenter was philosophically opposed to the use of CITES species by a scientific institution for research, but supported the statement that CITES specimens obtained by scientific institutions cannot be used for commercial purposes. Both commenters supported the requirement that specimens be permanently recorded as being part of an institution's collection but not necessarily formally acquisitioned by the sending institution. However, the commenters expressed concern that the requirement that Appendix-I specimens be centrally and permanently housed means that the specimens must be kept segregated from other specimens in the institution's collection and would preclude the donation of such specimens to other institutions. We interpret this requirement to mean that Appendix-I specimens are to be maintained in a way that they will not be used in a manner incompatible with the principles of CITES. Appendix-I specimens do not need to be separated from the rest of the collection provided that they are incorporated into the institution's record system. They may reside anywhere that is under the control of the registered scientific institution. This may include field stations, offsite storage facilities, or other facilities managed by the institution. As noted in the 2006 proposed rule (71 FR 20167), a specimen could be donated to another registered institution provided a record of the transaction is maintained.

Both commenters supported allowing the use of samples or subsamples from specimens that are maintained by registered institutions. One commenter was concerned that exchange of such samples could be inhibited by other countries' Management Authorities. We agree that this is a possibility and recommend that foreign Management Authorities be consulted prior to shipment. The other commenter suggested that we add a definition of ''sample.'' We do not think such a definition is necessary as the meaning of this term is commonly understood.

Traveling exhibitions (§ 23.49): Article VII(7) of the Treaty allows for the international movement without CITES certificates of pre-Convention, bred in captivity, or artificially propagated specimens that are part of a traveling zoo, circus, menagerie, plant exhibition, or other traveling exhibition. The exhibition must register each specimen with its Management Authority, and live specimens must be transported and cared for humanely. In Resolution Conf. 8.16, the Parties agreed to require traveling live-animal exhibitions to be accompanied by CITES

certificates to verify such registration, address technical problems, and prevent potential fraud. At CoP12, the Parties agreed to extend these provisions to all traveling exhibitions, not just traveling live-animal exhibitions. We describe provisions for traveling exhibitions in this section and define the term ''traveling exhibition'' in § 23.5.

A traveling-exhibition certificate acts like a passport. The exhibitor (i.e., the entity responsible for the specimens in a traveling exhibition) must obtain a separate certificate for each live animal. In the 2006 proposed rule (71 FR 20167), we specified that the certificate could only be issued to an exhibitor who owns the specimens. Based on comments received, we have revised our definition and the language in this section to indicate that the entity responsible for the specimens in a traveling exhibition may obtain the certificate. The exhibitor of live plants or dead parts, products, or derivatives may be issued a certificate with an inventory for all the specimens in the exhibition. The exhibitor retains the original certificate, which must be validated at each border crossing. We include a number of conditions to ensure that these certificates are used only for temporary cross-border movement by the exhibitor. A certificate may not be transferred to another exhibitor, and specimens cannot be sold or otherwise transferred when traveling abroad. Specimens can be transported internationally only for temporary display activities, not for breeding, propagating, or other purposes, and the specimens must return to the country in which the exhibition is based before the exhibition certificate expires.

Many specimens covered by this exemption are listed in Appendix I. We require under the general conditions (see § 23.56(a)(4)) that all live Appendix-I specimens must be securely marked or uniquely identified in a way that border officials can verify that the specimen and CITES document correspond. To ensure that each specimen exported or imported is the specimen indicated on the certificate, we recommend that Appendix-II and -III specimens also be clearly identified and, if appropriate, uniquely marked. Tattoos, microchips, tags, or other marks may be used. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have equipment on hand to read the microchip at the time of import, export, or re-export.

We received four comments on this section. One commenter welcomed the incorporation of the traveling-exhibition certificate into the regulations, stating that it will streamline the permitting process and result in smoother border crossings and more reliable recordkeeping. Another commenter strongly supported the requirement that the cross-border movement authorized under a traveling-exhibition certificate may not be for any purpose other than exhibition and the requirements in § 23.49(d)(6) regarding marking.

Another commenter requested that this section be amended to allow the use of traveling- exhibition certificates for activities other than exhibition, including research and conservation of museum specimens. We decline to make a change based on this suggestion. Article VII(7) provides an exemption for traveling exhibitions and the Parties agreed in Resolution Conf. 12.3 (Rev. CoP13) that traveling-exhibition certificates should be issued ''for exhibition purposes only.'' Article VII providesother exemptions and special provisions that may be appropriately used for other purposes, including international transport of museum specimens and specimens for research.

The same commenter stated that it was not always clear who should obtain the traveling- exhibition certificate, particularly when a specimen is loaned for an exhibition hosted by one or more institutions, rather than by the owner of the specimen, and suggested that the certificate should be issued to the owner of the specimen rather than to the traveling exhibition. The resolution specifies that the certificate be issued for specimens that are part of a traveling exhibition; it does not specify that the owners of the specimens must receive the certificates. Since there must be an entity responsible for the traveling exhibition and its specimens, a certificate is issued to that entity, which we refer to as the ''exhibitor.'' We have amended § 23.49 to clarify that it is the exhibitor who must obtain the certificate and to ensure that the terms ''exhibitor,'' ''traveling exhibition,'' and ''exhibition'' are used consistently. We likewise revised the definition of ''traveling exhibition'' in § 23.5 so that it corresponds more precisely to use of the term in this section.

The same commenter believed the word ''frequent'' should be deleted from the criteria for issuance and acceptance of traveling-exhibition certificates as it is not required by Resolution Conf. 12.3 (Rev. CoP13). We agree and have amended § 23.49(d)(1) accordingly.

Another commenter suggested that we strengthen the requirement for humane transport by including a reference to IATA LAR and the CITES' *Guidelines for transport and preparation for shipment of live wild animals and plants* in this section and requiring that any animal covered by a traveling-exhibition certificate also have a health certificate issued by a licensed veterinarian. Section 23.23(c)(7) requires that transport conditions for live animals comply with the CITES'*Guidelines for transport and preparation for shipment of live wild animals and plants* or, for air transport, with IATA LAR. We do not believe it is necessary to repeat those requirements here. The issuance of health certificates is beyond the scope of these regulations, but we note that § 23.3 informs the public that in addition to the requirements in part 23, they may also need to comply with other Federal, State, tribal, or local requirements.

The same commenter suggested that we ''explicitly require'' the exhibitor to return with the same number of specimens as originally exported, that the specimens be microchipped, and that the exhibitor provide the necessary equipment to read the chips. Section 23.49(e) requires that an entity may not sell or otherwise transfer a specimen covered by a traveling-exhibition certificate while traveling internationally. We do not believe that we need to require that all specimens be microchipped because the regulations as written provide sufficient means for border officials to ensure that each specimen exported or imported is the specimen indicated on the certificate.

Sample collections § 23.50: At CoP13, in an effort to address the international movement of display samples, such as sets of shoes or reptile skin samples, the Parties defined such shipments as sample collections and agreed to allow the in-transit shipment of these collections under specific conditions. Management Authorities could issue a CITES document that would allow the shipment to move from one country to another before returning to the originating country, rather than requiring the issuance of a re-export certificate from each country visited. Such a CITES document must be accompanied by a valid ATA carnet. The ATA carnet is an international customs document that allows the temporary introduction of goods destined for fairs, shows, exhibitions, and other events. One commenter supported the provisions allowing the movement of merchandise subject to CITES regulations on an ATA carnet.

The CITES document must list the same specimens that the accompanying ATA carnet lists and must include the number of the ATA carnet on its face. The CITES document can only be valid for the same length of time as the ATA carnet or 6 months, whichever is

shorter, and the shipment must return to the originating country prior to the expiration of the CITES document. None of the specimens within the sample collection may be sold, donated, or transferred while outside the originating country. The CITES document must be presented at border crossings, but only the ATA carnet must be stamped and signed at each intermediary border crossing by customs officials. At the time of first export or re-export and at re-import, the originating Party is to check the CITES document and sample collection closely to ensure that the collection was not changed. For import into and export or re-export from the United States, the shipment must comply with the FWS requirements for wildlife in part 14 of this subchapter and APHIS/CBP requirements for plants in part 24 of this subchapter and 7 CFR parts 319, 355, and 356.

Partially completed CITES documents (§ 23.51): Under Article VIII(3) of the Treaty, Parties are to ensure that CITES specimens are traded with a minimum of delay. At CoP12, the Parties agreed to issue partially completed documents when the permitted trade would have a negligible impact or no impact on the conservation of the species (see Resolution Conf. 12.3 (Rev. CoP13)). The permittee would be authorized to complete specifically identified boxes on the document and would be required to sign the document to certify that the information entered is true and correct.

We implement these procedures and issue single-use documents that are partially completed under specific circumstances for exports that are repetitive in nature (i.e., when the same types of specimens or the same specimens are exported shipment after shipment).

An applicant should submit the appropriate application form for the proposed activity (see §§ 23.18–23.20) and show that the use of this type of document is beneficial and appropriate. Upon review of the application, if appropriate, we will create a master file or annual program file for native species that contains all of the relevant information about the proposed activity. We will issue single-use partially completed documents based on the master file or annual program file when we find that the issuance criteria for the proposed activity and the issuance criteria for a partially completed document are met.

We received two comments on this section. While both commenters generally supported the concept of partially completed documents, one suggested limiting the use of such documents to pre-Convention specimens due to concern that wild-caught live animals could be mislabeled and shipped fraudulently as captive-bred animals. Further, the commenter suggested that such documents should not be used for animals in traveling exhibitions. We did not adopt these suggestions. Partially completed documents are issued for specific taxa and specific types of specimens. The permittee is authorized to fill in the destination and, in the case of specimens from an approved-taxa list, the quantity of specimens in the shipment and an inventory page.

The other commenter requested that we consider the use of partially completed documents for import of scientific specimens that were removed from the wild under the authority of the exporting government's wildlife management offices. The regulations as written allow us to issue and accept documents issued under the provisions of this section for wild-collected scientific specimens in limited situations.

Replacement documents (§ 23.52): We adopted the provisions of Resolution Conf. 12.3 (Rev. CoP13) on replacing documents that are lost, damaged, stolen, or accidentally destroyed. We clarify when replacement documents may be available and how to request them. One of the issuance criteria requires a full and reasonable explanation of the circumstances under which the CITES document was lost, damaged, stolen, or accidentally destroyed. We will also check to see if the exporter has requested a replacement document before and review the circumstances surrounding any previous request.

A replacement document must indicate on its face the reason the document was replaced. Since we sometimes receive a replacement document that does not provide this information, we may verify the validity of such a document with the issuing Management Authority before deciding if we will accept the document as a valid replacement. It is important that we issue and accept replacement documents only when the circumstances warrant doing so and that issuance of such documents prevents the use of the original CITES document for a different shipment.

When a replacement document is requested after a commercial shipment has left the United States, we will consult with the Management Authority of the importing country. When a replacement document is needed for a shipment that arrives in the United States, the importer should contact the exporter or re-exporter in the foreign country to assess the circumstances surrounding a lost, damaged, stolen, or accidentally destroyed CITES document. Then, the exporter or re-exporter should contact the Management Authority in that country concerning replacement documents, and the Management Authority will contact us directly.

Although the U.S. CITES document states in block 15 that it is ''valid only with inspecting official's ORIGINAL stamp, signature and date in this block,'' we will not validate U.S. replacement documents for shipments that have already left the United States because we cannot compare the actual shipment contents to the document. Instead, we will issue a replacement document only for the quantity that was originally exported as shown on a cleared copy of the FWS Wildlife Declaration (Form 3-177) or a copy of the validated CITES document for plants, and include a condition on the document describing this policy so the importing country can accept it as valid.

One commenter requested that we allow copies of the stamped original CITES document and the FWS Wildlife Declaration (Form 3-177) to be used for clearance purposes when documents are misplaced at the port after declarations have been submitted to the FWS. We decline to address this request since the provision proposed by the commenter is outside the scope of these regulations and has already been addressed through changes in port procedures.

Retrospective documents (§ 23.53): A retrospective document authorizes an export or re-export after that activity has occurred, but before the shipment is cleared for import. A shipment must be cleared when it first arrives at the port of import. At that time, we, APHIS, or CBP inspect the paperwork to see that it meets the requirements of CITES. The request for a retrospective document needs to be made at the time the specimens arrive at the port and are available for inspection.

Resolution Conf. 12.3 (Rev. CoP13) recommends that a Party neither issue nor accept retrospective documents, but recognizes that there may be some limited exceptions. This section allows for the issuance and acceptance of retrospective documents based on the resolution. We generally limit issuance of retrospective documents to noncommercial items and, even then, only in certain prescribed circumstances, which are clarified in this section. Management Authorities of both the exporting or re-exporting and the importing countries must be satisfied either that any irregularities that have occurred are not attributable

to the exporter or re-exporter or the importer, or, in the case of items for personal use, that evidence indicates a genuine error was made and there was no attempt to deceive. Thus, before a retrospective document can be issued, the exporter or re-exporter or importer must demonstrate either that he or she was misinformed by an official who should have known the CITES requirements (in the United States, an employee of the FWS for any species, or APHIS or CBP for plants; or in a foreign country, an employee of the Management Authority or CITES inspection authorities), or that the issuing Management Authority made a technical error on the CITES document that was not prompted by the applicant. An additional provision limited to individuals exporting or re-exporting certain specimens for personal use allows them to demonstrate that they made a genuine error and did not attempt to deceive.

The Parties intended for this provision to be used rarely and only under very narrow circumstances. The exporter is responsible for obtaining CITES documents before making a shipment and for inspecting the CITES documents to ensure the key information on the face of the permit, such as quantity and species, match what was requested and what is in the shipment. The provisions for retrospective documents are not to help resolve an enforcement issue, but to resolve a mistake by the government or a genuine error made by a person exporting or re-exporting specimens for their personal use.

We recognize that in some countries customs officials inspect and clear CITES shipments on behalf of the Management Authority, and we will consider that in making a decision. In the United States, however, although CBP officials have the authority under the ESA to enforce CITES, they are not generally responsible for the clearance of CITES wildlife or live plant shipments except for live plants being imported from Canada (see § 23.7(e)).

We will issue a retrospective document only if the Management Authority of the importing country agrees to accept it. The provision applies not only to the issuance of retrospective documents, but to the acceptance of such documents. We note that a number of CITES countries interpret this provision more strictly than the United States, and travelers may not qualify for a retrospective document for specimens, especially live wildlife or plants, taken with them to these countries.

Several commenters supported the general concept and appreciated the recognition that there are circumstances when issuance of retrospective documents is warranted. Two other commenters were opposed to the issuance of retrospective documents except to ensure humane treatment of live specimens. While we agree that issuance of retrospective documents should be very limited, we believe it is warranted under the specific circumstances described in § 23.53.

Two commenters asked howshipments are treated pending review of the circumstances to determine whether a retrospective permit can be issued. These determinations are made by our enforcement officials on a case-by-case basis. We refer the commenters to the general import/export requirements for wildlife in part 14 of this subchapter and the requirements for plants in part 24 of this subchapter and 7 CFR parts 319, 355, and 356.

One commenter asked why we limited the issuance of retrospective permits for Appendix-I specimens to certain shipments for personal use. The Parties have agreed that Appendix-I specimens must be subject to particularly strict regulation and that trade in these specimens should be authorized only in ''exceptional circumstances.'' As stated in the 2006 proposed rule (71 FR 20167), we expect commercial traders to know the laws that apply to their business, including CITES requirements, and to carefully inspect their documents for technical errors. Consequently, we limit the issuance of retrospective permits for Appendix-I specimens to certain pre-Convention Appendix-I specimens for personal use that meet the requirements in § 23.53(d)(7). Another commenter suggested that we add to the rule the language from the preamble stating that we expect commercial importers and exporters to know the law. We decline to adopt this suggestion because we believe that § 23.53(b)(7) adequately describes that expectation.

Another commenter suggested that we clarify that the provision restricting sale of specimens within 6 months following import under a retrospective document (§ 23.53(b)(5)(iii)) applies only to Appendix-II and –III species. We decline to adopt this suggestion. The restriction on sale applies only to specimens imported for personal use and therefore may apply to a pre-Convention Appendix-I specimen under certain circumstances (see § 23.53(d)(7)).

Two commenters requested clarification and additional details regarding the issuance process and what kind of information an applicant would need to provide to obtain a retrospective document. We refer the commenters to the discussion on this section in the 2006 proposed rule (71 FR 20167).

One commenter incorrectly stated that the provisions in this section would ''absolutely eliminate'' any possibility for a hunter to receive a retrospective permit if he or she had ever received a CITES permit before. While we generally will not issue a retrospective document to an individual who has received CITES documents in the past, we recognize that there may be situations where the importer or exporter was not responsible for whatever irregularity occurred and may therefore qualify for a retrospective document (see § 23.53(b)(7)).

Period of document validity (§ 23.54): Article VI(2) of the Treaty states that an export permit can be valid only for a period of 6 months from the date of issuance. Resolution Conf. 12.3 (Rev. CoP13) specifies the period of validity for re-export certificates (6 months), import permits (12 months), certificates of origin (12 months), and traveling exhibitions (3 years). Resolution Conf. 10.20 recommends that certificates of ownership be valid for no more than 3 years.

This section incorporates the recommended periods of validity established in the Treaty and the resolutions. We also set the term for an introduction-from-the-sea certificate at 12 months since the activity is similar to import. All CITES documents must specify the period of validity. All import and introduction-from-the-sea activities must be completed by midnight (local time at the point of import) of the expiration date indicated on the document. The only situation where an extension of the period of validity is authorized is for certain timber species under limited circumstances (see § 23.73).

Several commenters suggested that the periods of validity specified in this section for permits and certificates are too short. Another stated that the period of validity for traveling-exhibition certificates is too long. One commenter acknowledged that the periods of validity for CITES documents are set out in the Treaty and in Resolution Conf. 12.3 (Rev. CoP13), but urged us to ask the Parties to revisit this issue. We believe the established timeframes are reasonable for the activities permitted, and we do not believe it is appropriate to amend the Treaty or necessary to amend the resolutions in this regard.

Another commenter believed that the use of the phrase ''no longer than...'' in

§ 23.54(b) to describe the period of validity of CITES documents creates uncertainty for the regulated public. The commenter requested that the section be amended to state that a document is valid for 6 months, 3 years, etc., as appropriate, unless the FWS places a special condition on the document to address some unusual circumstance. In general, we issue CITES documents for the maximum period of validity allowed for the activity. We did not adopt the commenter's suggestion because § 23.54 provides the maximum period of validity for a CITES document, but a document may be issued for a shorter period of time.

Use of CITES specimens after import (§ 23.55): Unless an Appendix-I wildlife or plant specimen qualifies for an exemption under Article VII of the Treaty, it can be imported only when the intended use is not for primarily commercial purposes. In addition, the Parties addressed subsequent use of certain Appendix-I sport-hunted trophies by recommending that the trophies be ''imported as personal items that will not be sold in the country of import'' (Resolution Conf. 10.14 (Rev. CoP13) for leopard, Resolution Conf. 10.15 (Rev. CoP12) for markhor, and Resolution Conf. 13.5 for black rhinoceros).

This section provides conditions for the import and subsequent use of certain CITES specimens. The import and subsequent use of Appendix-I specimens and certain Appendix-II specimens, including transfer, donation, or exchange, may be only for noncommercial purposes. Such imports are conditioned that the specimen and all its parts, products, and derivatives may not be imported and subsequently used for any commercial purpose. Other Appendix-II specimens and any Appendix-III specimen may be used for any purpose after import, unless the trade allowed under CITES is only for noncommercial purposes.

Section 9(c)(1) of the ESA, which contains a prohibition on illegally traded specimens, confirms that the FWS's regulatory responsibility does not end at import. The commercialization of Appendix-I specimens can result in further demand, which is contrary to the intent of allowing limited import of Appendix-I specimens. We note that the condition does not apply to specimens, such as artificially propagated orchids, that are traded under a CITES Article VII exemption.

Two commenters supported the restriction on subsequent use of most imported Appendix-I species and Appendix-II species with an annotation prohibiting commercial trade as an important means of conserving these species. One of these commenters was concerned, however, that there is no mechanism, such as a reporting requirement, by which the FWS will track use of specimens over time. We have decided against adding any type of periodic reporting requirement on subsequent use of imported specimens. The regulations are clear, however, that such specimens may be used only for noncommercial purposes, and any use inconsistent with this standard would be a violation of the regulations. As noted in the 2006 proposed rule (71 FR 20167), the FWS will investigate any situation for which we receive information that such an imported specimen is being commercialized.

The same commenter expressed confusion over statements in the 2006 proposed rule (71 FR 20167) that certain specimens may only be imported when they are not to be used for primarily commercial purposes and that such specimens may be used only for noncommercial purposes. This commenter asked for clarification for what appeared to be two different standards.

Prior to importation of an Appendix-I specimen, the Management Authority must be satisfied that the specimen is not to be used for primarily commercial purposes. We cannot make a finding of not for primarily commercial purposes if the specimen could be commercialized following import. Therefore, this section is clear that any subsequent use of such specimens must be noncommercial.

One commenter argued that provisions in this section would prevent future donations of specimens for educational purposes. As explained in the 2006 proposed rule (71 FR 20167), certain specimens may only be imported when the use is not for primarily commercial purposes. Thus, any subsequent use may be only for noncommercial purposes. Nothing in the section prevents a person from donating or transferring an Appendix-I specimen or a specimen of a species listed in Appendix-II with an annotation prohibiting commercial trade. These specimens can still be donated, consistent with any other requirements of law, as long as there is no economic use, gain, or benefit by either the person or institution receiving the donation or the person making the donation. (See also the discussion in the preamble under § 23.5 on the definition of ''commercial.'')

Another commenter argued that it is only the purpose of the import at the time of import that is regulated by CITES and any later use is irrelevant. Nothing in the language of the Convention requiring the finding that the specimen ''is not to be used for primarily commercial purposes'' indicates that this examination is limited to the immediate use by the importer. As we indicated in the 2006 proposed rule (71 FR 20167), the commercialization of Appendix-I specimens following import can result in further demand, which is contrary to the intent of allowing trade in Appendix-I specimens only under ''exceptional circumstances.'' Appendix-II species that are annotated to allow trade only for noncommercial purposes face similar commercial pressures. We can only determine that the use will not be for ''primarily commercial purposes'' when we know that the specimen will not be subsequently used for economic gain or benefit.

One commenter disagreed with the provisions in paragraph (d) of the table that allow for any use with certain types of Appendix-I specimens and questioned how concerns regarding commercialization of Appendix-I species will not be realized if commercial use of such specimens is not prohibited. All of the situations listed under § 23.55(d) represent provisions under Article VII of the Convention that provide exemptions from the requirements otherwise imposed for Appendix-I species under Article III. These exemptions represent situations in which the Parties have found that commercialization, or the potential for commercialization, of certain types of specimens does not pose a threat to species whose trade must otherwise be limited to noncommercial uses.

CITES document conditions (§ 23.56): General conditions apply to all CITES documents, standard conditions apply to specific types of documents, and special conditions may be placed on a CITES document when the authorized activity warrants it. All CITES document conditions must be met for a shipment to be lawful.

Resolution Conf. 8.13 (Rev.) recommends that Parties, where possible and appropriate, adopt the use of microchip transponders for the secure identification of live Appendix-I wildlife. Because the Parties have identified a number of technical issues that need to be addressed, we are not requiring that all Appendix-I wildlife be marked with microchips. We do require, however, that all live Appendix-I wildlife be securely marked or uniquely identified. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have

equipment on hand to read the microchip at the time of import, export, or re-export. One commenter supported the requirement that Appendix-I specimens be securely marked or uniquely identified.

What Are the Changes to Subpart D of 50 CFR Part 23—Factors Considered in Making Certain Findings?

Legal acquisition (§ 23.60): Under Articles III, IV, and V of the Treaty, we must make a legal acquisition finding before issuing export permits and re-export certificates for Appendix-I, -II, and -III wildlife and plants. The Parties have also agreed through a number of resolutions to make this finding before issuing certain exemption documents under Article VII of the Treaty. These include Resolutions Conf. 10.16 (Rev.) and 12.10 (Rev. CoP13) on wildlife bred in captivity; Conf. 9.19 (Rev. CoP13) and 11.11 (Rev. CoP13) on artificially propagated plants; Conf. 10.20 on personally owned live wildlife; and Conf. 11.15 (Rev. CoP12) on scientific exchange.

There are two types of legal acquisition determinations: (a) whether a specimen and its parental stock were traded internationally under the provisions of CITES and (b) whether they were acquired consistent with relevant laws for the protection of wildlife and plants. In the United States, these laws include all applicable local, State, Federal, tribal, and foreign laws.

We make the legal acquisition finding on a case-by-case basis considering a number of general and specific factors (see the preamble to Subpart E for a discussion of legal acquisition for State or tribal programs). General factors include the status of the species; whether the specimen was cultivated from exempt plant material, is a hybrid, or was bred in captivity or artificially propagated; whether the species is common in a captivity or cultivation in the United States and has been documented to breed or propagate readily in a controlled environment; and whether significant illegal trade in the species occurs, specimens have been legally imported into the United States, and the range countries allow commercial export of the species. We also consider a number of specific factors, such as whether the specimen was confiscated, a donation of unknown origin, or imported previously. Thus, while it is the responsibility of the applicant to provide sufficient information for us to make this finding, we consider not only information provided by the applicant but other relevant trade information, scientific literature, and advice of experts. In making a legal acquisition finding, we may also consult with foreign Management and Scientific Authorities, the CITES Secretariat, other U.S. governmental agencies, and nongovernmental experts.

We hold persons who conduct commercial activities involving protected wildlife and plants to a high standard in understanding and complying with the requirements of the laws that affect their activities. We apply a lower information requirement, in most instances, for a person who acquires a specimen in the United States and wants to travel internationally with it for personal use. One commenter disagreed with this approach and stated that all trade, whether commercial or noncommercial, should be subject to the same level of scrutiny. We believe this system for individuals traveling internationally with their personal items or personally owned live wildlife is appropriate for the limited number of specimens involved, for the low conservation risk posed. We will, however, request additional information when noncommercial trade in a particular species raises greater conservation concern.

For the export of specimens that are bred in captivity or artificially propagated in the United States, we consider whether the breeding stock or cultivated parental stock was established under the provisions of CITES and relevant national laws according to Resolutions Conf. 10.16 (Rev.) and 11.11 (Rev. CoP13). In addition, for the registration of Appendix-I commercial breeding operations or nurseries, Resolutions Conf. 12.10 (Rev. CoP13) and 9.19 (Rev. CoP13) require that a Management Authority demonstrate that the parental stock was legally acquired. We defined the terms ''parental stock,'' ''breeding stock,'' and ''cultivated parental stock'' (see §§ 23.5, 23.63, and 23.64,respectively).

We also allow the export of donated CITES specimens of unknown origin by public institutions on a case-by-case basis under limited circumstances. In some instances, public institutions, primarily zoos, aquariums, and botanical gardens, receive unsolicited donations of wildlife and plants. When this occurs, the institution may not be able to obtain reliable information concerning the origin of the specimen. It is extremely difficult to issue a permit when no data exist on the origin of the specimen, especially when the donor remains anonymous. The underlying purpose of CITES is to protect, conserve, and benefit the listed species. We believe that these regulations, rather than opening a loophole for laundering illegally obtained specimens, will assist in the suitable placement of specimens without leading to illegal or unjustified removal of wildlife and plants from the wild. We emphasize that this provision is only for limited, noncommercial international trade in CITES species.

We received over 40 comments on this section, all of which were supportive. One commenter was concerned about how we would obtain data on the volume of illegal trade since there is no centralized source of data on all illegal trade. It is true that there is not a single, central source of illegal trade data, but we do have the ability, through consultation with other Parties, the CITES Secretariat, nongovernmental organizations, and law enforcement agencies to obtain data on illegal trade. It is through the review of these data that we are able to make a determination on the presumed level of illegal trade in CITES species.

We removed ''volume of legal trade'' from the list of factors in § 23.60(d)(5) because the risk associated with the volume of legal trade is not a continuum but rather must be considered on a case-by-case basis when making a legal acquisition finding.

Non-detriment findings (§ 23.61): Under Articles III and IV of the Treaty and Resolution Conf. 10.3 we must make a non-detriment finding before issuing export permits and introduction-from-the-sea certificates for Appendix-I and-II wildlife and plants and import permits for Appendix-I wildlife and plants. This section explains how the U.S. Scientific Authority makes its non-detriment findings.

We identify several factors that we consider in making a non-detriment finding. These factors include whether the activity represents sustainable use or would result in net harm to the status of the species in the wild. We believe that ''no *net* harm'' is appropriate because the finding required by CITES is whether a proposed activity will be detrimental to the survival of the species, not individual animals. For both Appendix-I and -II species, this generally involves a determination of whether there is any effect, either adverse or beneficial, on the species in the wild, and if so, an assessment of the productivity of the species to determine whether the removal of specimens from the wild will adversely affect the species' long-term viability. However, Appendix-I species require consideration of additional factors, such as the effect of the import or export on recovery efforts for the species, including long-range strategies to ensure the survival of the species. All the

effects of the proposed trade, whether direct, indirect, or cumulative, must be assessed to determine the aggregate ''net'' effect on the survival of the species before making the finding. We amended 23.61(g)(5) so that it reads ''from high to low occurrence of legal trade'' because high volumes of trade, either legal or illegal, create potential for detriment. Species subject to high volumes of trade may be selected as candidates for the Review of Significant Trade to assess whether non-detriment findings are being made appropriately.

One commenter asked us to further clarify our statement that a non-detriment finding must take into account ''no *net* harm'' to the species rather than ''no harm'' to individuals within a species. Two commenters strongly supported our view. One supporter noted that it has become increasingly necessary to engage in conservation activities that result in a net benefit to the species, but which at the same time may result in some negative impact on a limited number of individuals. Our approach follows the requirement of the Treaty, which focuses on species rather than individual specimens with regard to non-detriment findings.

We consider a number of factors in making the non-detriment finding, including biological, trade, and management information on the species. The information must include not only what is known about the current status of the species, but the potential biological impact that the proposed import or export will have. For example, we consider whether the biological impact is to reduce the population of the species (by direct removal of animals) or to interfere with reproduction or recruitment (such as by targeting breeding animals or a specific age-class for removal or sampling). The type and magnitude of the biological impact are weighed against the status and needs of the species to determine whether issuance of the permit will be detrimental to the survival of the species.

This section describes how we use both risk assessment and precautionary measures to make a non-detriment finding. There is a continuum of how stringent the documentation requirements may be for us to make a non-detriment finding. The higher-risk, rarer species will generally require a more complete documentation trail to show that they were obtained in a manner that was not detrimental to the survival of the species. Documentation requirements will be strictest for species that have been recently discovered, are not established in cultivation or breeding programs, are difficult to propagate or breed, and, most importantly, could be adversely impacted by trade in wild-collected specimens due to a restricted range or other factors. We use precautionary measures when a review of the available information reveals an absence of essential data as to the intensity of the effect of the proposed trade on the status of the species in the wild. The lack of information may cause the Scientific Authority to be unable to findthat the import or export will not be detrimental to the survival of the species. This process was upheld by the Federal District Court in *Prima* v. *DOI*, (E.D. La. Feb. 19, 1998) when we denied a CITES document based on a lack of sufficient information to make a non-detriment finding.

We only question the finding of the exporting country if our analysis of the best available biological information shows a problem. We can neither accept the finding of the exporting country nor ascertain the potential for detriment derived from the purpose of the import without knowledge of the exporting country's management program for the species (including whether one exists or is being implemented) or what scientific information exists on the species itself. We must also determine whether the effect of allowing imports for a particular purpose can be separated from other potentially detrimental impacts on the species, including trade for other purposes.

We are bound to base our non-detriment finding on the best available biological and management information, and Resolution Conf. 9.21 (Rev. CoP13) contains sufficient latitude to allow this. The resolution does not require us to accept imports of Appendix-I species blindly if the Parties have approved a quota for the species for the country of export. Rather, the resolution contains a provision that preserves the independent authority of the Scientific Authority of an importing country to make its own non-detriment finding if the quota has been exceeded or if ''new scientific or management data have emerged to indicate that the species' population in the range State concerned can no longer sustain the agreed quota.'' Similar to our rationale for obtaining information from range countries for making our non-detriment findings on the import of trophies, we rely on the best available scientific and management information on the species for the exporting country to determine if the basis for the quota is still valid. We use the best available biological information, not just the information used as the basis for the quota.

Most commenters agreed with our description of how we make non-detriment findings. We received many comments endorsing our statement that controlled trade may create incentives for conservation and our consideration of adaptive management in making non-detriment findings. Several commenters supported our recognition of the potential ecological harm caused by importation of invasive species under CITES permits. One supporter asked why disease transmission is a factor considered in making the findings when invasive potential is not. We consider disease transmission because we are examining the potential effects disease could have on other members of the imported or exported species, whether in the wild or in captivity. Invasive potential describes the effects the imported or exported species could have on other species, so it is not relevant to whether or not the trade is detrimental to the survival of the species being imported or exported.

One commenter said that the FWS should not collect information to make a non-detriment finding for imports of sport-hunted trophies of Appendix-I species if the trophy is covered by an export quota reported by the range country to the Secretariat and the exporting country has issued its own non-detriment determination. We and several commenters disagree. This was also discussed in the 2006 proposed rule (71 FR 20167). Resolution Conf. 2.11 (Rev.), on trade in hunting trophies of species listed in Appendix I, recommends that the Scientific Authority of the importing country make an independent non-detriment finding in accordance with Article III of the Convention. Resolution Conf. 9.21 (Rev. CoP13) regarding interpretation and application of quotas for species included in Appendix I also gives Parties the flexibility to evaluate scientific and management data to determine whether the quota adequately ensures the sustainability of the species. The commenter objected to § 23.61(f)(4) because we indicate that, where insufficient information is available to make the non-detriment finding, we take a precautionary approach and state that we are unable to find non-detriment. He suggests that, in such situations, we use Resolution Conf. 8.3 (Rev. CoP13), which recognizes the socioeconomic and conservation benefits of trade in wildlife. We note that Resolution Conf. 8.3 (Rev. CoP13) indicates that there are benefits of wildlife trade only ''when carried out at levels that are not detrimental to the survival of the species in question.''

Three commenters stated that we should not treat non-detriment determinations for imports and exports of Appendix-I species in the same manner. We addressed this comment in the 2006 proposed rule (71 FR 20167) and refer the commenters there for additional clarification. One commenter suggested we add language to the regulations to consider the cumulative effects of past and likely future imports of specimens on the survival of the species. This is generally considered in § 23.61(e)(3).

A few commenters recommended adding a provision that would accommodate a streamlined process for making non-detriment findings under circumstances where a range-wide population assessment for a particular Appendix-II species has been completed. We agree that a range-wide population assessment would be very useful in making non-detriment findings. It may even expedite the process by providing much of the information needed to make the finding; however, such an assessment would still need to be reviewed as part of our independent process of determining non-detriment.

One commenter suggested that we modify § 23.61(e)(1) to allow consideration of the risk of extinction for both the species as a whole and the population from which the specimen was obtained when making a non-detriment finding. Another commenter asked that the FWS only consider the species as a whole in making the finding. We maintained the text ''species as a whole or the population from which the specimen was obtained'' because, if during the course of our review of the species throughout its range we determine that there is cause for focusing on a specific region or population from which the specimen was removed, we may consider the more local threats. There may be instances where the species is abundant throughout parts of its range, yet may be threatened in other parts. In addition, Article IV of the Treaty states that the Scientific Authority should ensure that the export of specimens listed in Appendix II is controlled in order to maintain the species throughout its range at a level consistent with its role in the ecosystems in which it occurs.

One commenter provided a list of additional biological factors to consider when making non-detriment findings. Many of these suggested factors are already considered under the more general factors in § 23.61; others are not relevant. The commenter also requested regulatory changes that are not consistent with the Treaty, such as requiring countries exporting specimens to the United States to provide copies of their non-detriment findings to the U.S. Scientific Authority for review prior to export. As we explained previously, our determination of non-detriment for Appendix-I species is independent of the finding made by the exporting country. Although the exporting country is not required to send copies of its non-detriment finding on Appendix-II species to the importing country, if there is reason to suspect that appropriate and valid findings are not being made, a country or species can be considered for the Review of Significant Trade by the CITES Animals or Plants Committee. The commenter also suggested that non-detriment findings should not be limited to the survival of the species, but should require that there is a conservation benefit to the species from the import or export. We disagree because the requirement for a conservation benefit would be beyond the requirements of the Treaty.

Two commenters requested that the public be able to comment on Appendix-I and Appendix-II applications. We responded to similar comments in the 2006 proposed rule (71 FR 20167).

Not for primarily commercial purposes (§ 23.62): Under Article III of the Treaty, import permits or introduction-from-the-sea certificates for Appendix-I species can be issued only when a Management Authority is satisfied that the specimen will not be used for primarily commercial purposes. The Parties interpreted ''primarily commercial purposes'' in Resolution Conf. 5.10. We incorporated the provisions of this resolution in this section and defined ''commercial'' and ''primarily commercial purposes'' in § 23.5.

For an import or introduction from the sea of an Appendix-I specimen to qualify for a CITES document, the noncommercial aspects of the import or introduction must clearly predominate. We evaluate each application on a case-by-case basis and take all factors involved into account. The applicant needs to provide core information on the purposes for carrying out the proposed activity and the intended use of the specimen after import or introduction from the sea for us to consider in making our finding. If the noncommercial aspects do not clearly predominate, we will consider the import or introduction from the sea to be primarily commercial.

Instead of a specific list of information that each applicant must provide, we describe how we make our finding, provide examples of types of transactions in which noncommercial aspects may predominate, and outline factors we will consider in assessing the level of information we will need to make a finding. As with legal acquisition (§23.60) and non-detriment (§23.61) findings, we use a risk assessment approach in evaluating the level of information needed to make our finding. We require less detailed information when the import or introduction from the sea has a low risk of being primarily commercial, and require more detailed information when the proposed activity poses greater risk. For activities with a high risk of being primarily commercial, we will analyze anticipated measurable increases in revenue and other economic value associated with the proposed import or introduction from the sea. Based on our experience, we anticipate that we will rarely receive an application that involves activities with anticipated high net profits. We expect that only in rare instances will we need to ask the applicant for the detailed analysis described in § 23.62(e)(4).

Two commenters indicated that we had not provided a clear enough explanation of what we consider a ''high-risk activity.'' Although we do not specifically define this term, we provide a list of the factors we consider (see § 23.62(d)) in making our finding and the risk, from high to low, associated with each factor. We ask applicants to describe their proposed activity and intended use. If information raises a reasonable question of whether commercial motivation may have influenced the proposed import, we will ask for more detailed information.

One commenter disagreed with the use of a risk assessment process under this section. Another commenter stated that the risk assessment approach penalizes public display facilities that are interested in obtaining specimens that have high public appeal or are not common in the United States, thus raising the ''risk'' that the import is commercial in nature. The risk assessment approach is a tool to facilitate review of applications. By using such an approach, we are able to lower the documentation burden on some applicants, without eliminating the possibility that for other applications we need more documentation than normally requested. We consider the type of entity as a factor in deciding the level of information we need to make a finding. In general, the nature of for-profit organizations makes it more difficult for us to find that specimens involved in a proposed import or introduction from the sea will not be

used for primarily commercial purposes. In all cases, however, we make the required findings on a case-by-case basis taking intoaccount all available information.

One commenter disagreed with the statement in § 23.62(b)(5) that we will consider the purpose of the export in making a not-for-primarily-commercial-purposes finding and asserted that conservation benefits to range States should not be considered as part of this finding. The same commenter argued that commercial enterprises, such as public display facilities, should never be allowed to import an Appendix-I specimen by claiming that the purpose is for conservation or education. We disagree. It is possible that an import or introduction from the sea, although superficially commercial, may qualify as not for primarily commercial purposes because anticipated profit will be offset by conservation benefits provided through assistance to range countries, research, or other considerations that result from the import or introduction from the sea.

In the 2006 proposed rule (71 FR 20167), we stated that all net profits generated from activities associated with the import or introduction from the sea of an Appendix-I species must be used for conservation of the species in a range country. Two commenters strongly supported this requirement. Two other commenters voiced strong opposition, citing a belief that there is no legal basis for such a requirement and that it would be more appropriate as part of an enhancement finding under the ESA. The same issue was raised earlier and addressed in our 2006 proposed rule (71 FR 20167). One of these commenters also stated that requiring a permittee to give up profits is a disincentive to participation in conservation activities, amounts to an illegal tax or fee, and violates the ''takings clause'' of the Fifth Amendment.

Before we can issue a CITES document, we need sufficient information to make the required findings. We have determined that for activities with a high risk of being primarily commercial (i.e., activities that are anticipated to generate revenue above the operating cost of maintaining the specimen), the purpose of the import would be considered primarily commercial if the institution or individual that imported the specimen utilized the profits for any purpose other than for the conservation of the species. We do not agree with the commenter that this requirement is a violation of the U.S. Constitution.

However, after additional analysis, we believe that requiring all net profits generated in the United States from such activities be used for the conservation of the Appendix-I species in a range country may not be reasonable, or even desirable, in some cases. We are aware that there are situations where *ex situ* conservation efforts, such as research or captive breeding, may provide greater benefit to a species than attempting to carry out *in situ* conservation in a country where the logistical or political situation would make such activities unworkable. As a result, we have modified § 23.62(b)(7). We will still require that net profits be used for conservation of the species, but will not specifically require that these funds be used in a range country. We will continue to request information on how revenue generated by the import of the Appendix-I specimen would be utilized, including a description of any funded conservation project and its monitoring plan, for consideration when making our finding.

One commenter argued against the economic analysis described in § 23.62(e). Another commenter supported an extensive review of all profits associated with the import and use of an Appendix-I specimen, but requested an explanation of how we intend to conduct such comprehensive reviews and how we intend to monitor a facility to ensure that it continues to use any profits generated from the import in the manner required by the regulations.

As stated previously, we do not anticipate that there will be many cases in which the importer would need to provide in-depth, ongoing financial reporting. As both commenters correctly noted, the onlycurrent reporting of this type is for giant pandas. We believe that the reporting requirements are being successfully implemented by the four U.S. zoos that currently hold pandas. To date, the reporting has provided clear documentation to support our finding that the import was not for primarily commercial purposes and has allowed us to monitor the activities to ensure that our initial findings remain valid.

One commenter suggested that this section should be revised to make it consistent with our definition of commercial and argued that, if we interpreted the concept correctly, we could not consider the import of sport-hunted trophies to be not for primarily commercial purposes. We allow the import of Appendix-I sport-hunted trophies only for personal use, which is not a primarily commercial purpose. The Parties have recognized that trade in certain Appendix-I specimens and annotated Appendix-II specimens is allowable provided that the specimen is a personally hunted trophy that will not be used for commercial purposes. We believe our definition of sport-hunted trophies, as written, is in line with the intent of the Parties (see discussion in the preamble for § 23.74).

Bred in captivity (§ 23.63): Article VII(4) and (5) of the Treaty provide exemptions for wildlife bred in captivity. To establish a standard interpretation of the term ''bred in captivity,'' the Parties adopted Resolution Conf. 10.16 (Rev.). We incorporated provisions of the resolution in this section.

In making this finding, we consider the conditions under which an individual specimen is bred, whether the breeding stock was established legally and in a non-detrimental manner, and whether it is maintained with limited introduction of wild specimens. We also consider whether the breeding stock has reliably produced offspring to at least the second generation (F2), or whether it is managed in a way that has been demonstrated to result in the reliable production of F2 offspring and has produced some F1 offspring.

We may consider whether specimens of a species qualify as bred in captivity for the breeding population of an individual operation or any larger conglomerate of breeding operations, up to and including the entire U.S. captive population. The breeding stock of an individual operation may independently meet the bred-in-captivity criteria based on its own history and production data, including the reliable production of F2 offspring. Few operations, however, have sufficient stock to meet the criteria. Also, we may limit bred-in-captivity findings to individual operations when information on a broader captive population is lacking, when there is ongoing import of wild-caught specimens into the United States, or if there is significant illegal trade in the species. Alternatively, by evaluating a larger population, we have more extensive information with which to make our finding. If we can demonstrate that the entire U.S. population or any conglomerate of breeding operations meets the criteria, then all specimens within that breeding population can be considered to meet the criteria without requiring a review of each individual breeding facility.

Typically, we consider the entire U.S. captive population of an exotic species to meet the bred-in-captivity criteria if, among other things, the U.S. population is a ''closed'' population that is not augmented through imports of wild-

caught specimens. These often are populations that can be tracked to a limited parental population that qualifies as pre-Convention or was otherwise legally established, and for which there is both a lack of evidence of current illegal trade into the United States and reliable breeding of the species within the United States to F2 or beyond. Thus, we have determined that a number of species commonly held in the United States (such as lions, tigers, and brown-eared pheasants) qualify as bred in captivity. We may find, however, that only part of the U.S. population qualifies as bred in captivity, such as a population managed cooperatively by zoos, if only that part of the population can be shown to meet the criteria.

One commenter requested clarification of whether animals bred and raised on a U.S. game ranch would qualify as bred in captivity under these regulations. To meet the definition of bred in captivity, a specimen must be bred in a controlled environment that is actively manipulated to produce specimens, enclosed to prevent the movement of specimens out of the environment, and have characteristics such as artificial housing, waste removal, provision of veterinary care, protection from predators, and artificially supplied food. In general, we would consider a controlled environment as being a small enclosure (less than a few acres) where an animal could not survive without direct human assistance. While it may be possible that animals could be held in a controlled environment, as defined by the regulations, on a game ranch, we would not normally consider a large (over a few acres) area surrounded by a game fence to be such a controlled environment. Typically, game ranches in the United States consist of hundreds of acres of open area where there is limitedhuman interaction, and the animals can survive without direct human assistance. However, if you believe specimens on your game ranch meet the requirements, we will evaluate your request to designate animals bred at your facility as bred in captivity.

One commenter suggested that there should be an allowance for noncommercial breeders of Appendix-I species to periodically augment their programs with wild stock. The commenter noted that this is particularly important for rare species, so that best-suited individuals are maintained in captivity and for re-introduction, if required. This section of the rule allows the occasional introduction of wild specimens and lists conditions that are similar to those required by Resolution Conf. 10.16 (Rev.). The purpose of the augmentation must be to prevent or alleviate deleterious inbreeding or to dispose of confiscated animals. However, wild Appendix-I specimens may not be imported for the purpose of augmenting a commercial captive-breeding operation because this would be a violation of Article III. We added a reference to § 23.46(b)(12) in § 23.63(d) to highlight this restriction.

Two commenters were critical of § 23.63(c)(3)(iv) because they thought it appeared to be stricter, and thus more difficult to meet, than Resolution Conf. 10.16 (Rev.). They believed our addition of ''consistently'' and ''has produced first-generation offspring'' to the criteria in § 23.63(c)(3)(iv) went beyond the intent of the resolution. We addressed this in the 2006 proposed rule (71 FR 20167) and believe that this section as written is consistent with Article VII(4) and (5) of the Treaty and the intent of Resolution Conf. 10.16 (Rev.). We will base our determination of whether a breeding operation has achieved consistent production or second or subsequent generations on the life-history characteristics of the taxon involved. Some species mature quickly, have short gestation periods, and produce many offspring, whereas other species take many years to mature, have long gestation periods, and produce few offspring. Thus, fewer offspring could indicate consistent production in species that take many years to reproduce when compared to species that would be expected to reproduce earlier and more frequently. If an operation has not consistently produced specimens to the second or subsequent generations, we require that it has produced first-generation offspring and is using husbandry methods demonstrated to result in the production of second and subsequent generations. We cannot determine that a breeding operation is able to implement methods for producing second-generation offspring if it has not demonstrated its ability to reproduce the species at all.

One commenter was concerned that the bred-in-captivity provisions could allow for fraudulent labeling of wildlife as captive-bred. To show that specimens qualify as bred in captivity, applicants must demonstrate that they meet the criteria in § 23.63. Past applicants have included breeding records, photographs of the breeding facility, and documentation of the origin of the founder stock. If we receive reports of fraudulent documentation or other illegal activity, we will work with our Office of Law Enforcement to take appropriate action. The commenter also mentioned that we do not include a marking requirement for captive-bred specimens. However, the regulation is consistent with Resolution Conf. 10.16 (Rev.), which recommends that trade in a specimen bred in captivity be permitted only if it is marked in accordance with resolutions adopted by the Parties. We have incorporated those resolutions in the appropriate sections of these regulations.

Artificially propagated (§ 23.64): Article VII(4) and (5) of the Treaty provide exemptions for artificially propagated plants. Modern developments in plant propagation, such as the use of micropropagation and growth of seedlings in sterile flasks, have allowed large quantities of artificially propagated plants to be produced. Resolution Conf. 11.11 (Rev. CoP13) addresses ways to reduce the paperwork required to trade plants internationally while maintaining protection of wild plants.

This section is based on Resolution Conf. 11.11 (Rev. CoP13), and incorporates criteria we use to decide whether plants, including cuttings or divisions, grafted plants, and timber, qualify as artificially propagated. To qualify as artificially propagated, a plant must have been grown under controlled conditions. We also consider whether the cultivated parental stock was established legally and in a non-detrimental manner, and whether it is managed in a way to ensure its long-term maintenance. Plants grown from exempt plant material, including exempt seeds that may have been collected from the wild, are considered artificially propagated when grown under controlled conditions.

At CoP13, the Parties agreed to amend the definition of ''artificially propagated'' to allow, in exceptional circumstances, for some plants grown from wild-collected seeds or spores to be treated as artificially propagated if certain conditions are met. The basis for the exception is the practical limitations that arise for long-lived, late-maturing species, such as certain trees (e.g., the monkey-puzzle tree, *Araucaria araucana*). The exception is allowed only when the seeds or spores are legally collected and propagated in a range country and the Scientific Authority of that country has determined that the collection of the seeds or spores was not detrimental to the survival of the species in the wild, and further that allowing trade in such specimens has a positive effect on the conservation of wild populations. A portion of the plants produced must be used for replanting in the wild, to enhance recovery of existing

populations, or to re-establish populations that have been extirpated. Some plants produced under such circumstances must also be used to establish a cultivated parental stock for future production so that removal of seeds or spores from the wild can eventually be reduced or eliminated.

One commenter noted that the definition and application of the term ''artificially propagated'' was too restrictive for wild seeds. The commenter suggested that growers of woodsgrown American ginseng should have the option of using locally harvested seeds from wild plants. As described in the 2006 proposed rule (71 FR 20167), we are applying the criteria of CITES Resolution Conf. 11.11 (Rev. CoP13) to determine whether plants qualify as artificially propagated. If seeds from CITES plant species are exempt from CITES control, as is the case for American ginseng, then plants grown from exempt seed in controlled conditions are considered artificially propagated according to the criteria of Resolution Conf. 11.11 (Rev. CoP13). However, this is a separate issue from whether States allow ginseng seed to be harvested from the wild for such purposes or whether we consider collection of wild seed for the production of artificially propagated ginseng to be undermining the conservation of the species.

Suitably equipped to house and care for (§ 23.65): Under Article III(3)(b) and (5)(b) of the Treaty, we must determine that any individual or institution receiving a live Appendix-I specimen being imported or introduced from the sea is suitably equipped to house and care for that specimen. These requirements are to ensure that rare specimens will survive following import.

This section outlines the factors we consider in making this finding. All individuals or institutions that will be receiving specimens must be identified in an application, whether or not they are the actual importers of the specimens, and their facilities approved by us, including individuals or institutions that are likely to receive specimens within 1 year of the specimens' arrival in the country. We consider all identified uses of the imported specimens that could be reasonably expected to occur, and the housing and care requirements for those uses.

We base our finding on the best available information on the requirements of the species and information provided by the applicant. We give closer scrutiny to applications for species with more demanding biological and husbandry or horticultural needs. We would give less scrutiny for a captive-born, commonly held species, like a scarlet macaw (*Ara macao*), due to the ease with which such a species can be held in captivity and the availability of veterinary care and commercially prepared diets. For a species such as the Chinese giant salamander (*Andrias davidianus*), which is not commonly held in captivity and has very restrictive husbandry and housing requirements, we will require a greater level of detail regarding the facilities and personnel where the specimen would be held.

We also provide the general and specific factors that we consider in making this finding. We consider whether a facility supplies adequate space, appropriate living conditions (temperature, light, etc.), adequate veterinary or horticultural care, sufficient security, and properly trained staff to care for the specimen being imported. We also assess whether a facility has had a reasonable survival rate of specimens of the same or similar species previously in its care. We believe 3 years of data on numbers of animals or plants maintained at the facility, mortalities, and occurrence of significant disease generally provides sufficient information for us to consider. The 2006 proposed rule (71 FR 20167) included language that suggested that we would consider a facility's ability to reproduce or propagate specimens in making a finding under this section. We have deleted those references in paragraphs (d)(1) and (e)(3) because the purpose of the finding is to determine if a facility is able to house and care for a specimen, not whether a facility is capable of breeding or propagating it.

An applicant may apply for a CITES document to import or introduce from the sea a specimen before the facility is completed or the staff who will maintain the specimen has been identified or properly trained. In such a case, we review the information, including construction plans or intended staffing, and make the finding based on that information. We would, however, condition any resulting permit to require that the import could not occur until the facility has been completed, or the staff hired and trained, and approved by us.

Three commenters supported the provisions in this section. One commenter encouraged us to maintain an open dialogue with experts experienced with individual taxa because the ''state of the art'' in animal and plant care is constantly changing. These regulations are designed to allow such flexibility. We welcome the input of experts to keep us informed about the most recent advances in animal and plant care and husbandry.

Two commenters noted that many imported animal specimens are covered by the Animal Welfare Act (AWA), which is administered by the USDA. One commenter argued that this makes our regulations duplicative, and another asked whether the FWS or the USDA regulations would take precedence in determining whether or not a facility is suitably equipped to house a particular species. The AWA is limited to warm-blooded vertebrates and does not cover all instances in which we would be required to make a finding under this provision. We consider whether or not the applicant is USDA-licensed and consult with the USDA about recent inspection reports. In cases where it is applicable, we will use information from the USDA to inform our decision about a particular facility.

The commenter also requested that we develop stringent species-specific animal care regulations and include regular inspections of facilities that receive imported specimens. We believe that this is unnecessary. Our regulations allow for the evaluation of the housing and care of the specimens of any taxon under a variety of conditions. The FWS staff may visit facilities, and if there is reason to suspect that animal care and housing is not what was reported, we can notify USDA inspectors or our Office of Law Enforcement. The commenter encouraged us to consider making the finding for all imported specimens regardless of how the species is listed and whether or not the specimen is captive bred. We have limited the regulations in this section to implementing Article III (3)(b) and (5)(b) of the Treaty. There is no basis for making such a finding for Appendix-II or -III species.

What Are the Changes to Subpart E of 50 CFR Part 23—International Trade in Certain Specimens?

This subpart deals with situations that are either covered by specific resolutions or by procedures we have developed to deal with certain native CITES species from States or Tribes with appropriate conservation management programs and legal controls. One commenter suggested that we add a section in this subpart to address international trade in raptors and another commenter requested the addition of a section on trade in live animals to address humane transport issues in greater detail. We believe that requirements for trade in raptors and other live specimens are sufficiently described in this rule as written, and

that separate sections covering such specimens are not necessary.

Export of heavily traded native species (§§ 23.68–23.70): Certain native species (American ginseng (*Panax quinquefolius*), bobcat (*Lynx rufus*), river otter (*Lontra canadensis*), Canada lynx (*Lynx canadensis*), gray wolf (*Canis lupus*), brown bear (*Ursus arctos*), and American alligator (*Alligator mississippiensis*) that are managed by a State or tribal conservation program are traded internationally, sometimes in high volumes. As for all CITES Appendix-I and -II species, before we can issue a CITES document to allow export, we must find that the specimens were legally acquired and that the export will not be detrimental to the survival of the species in the wild. Over the past 25 years, we have worked with State and tribal governments to develop procedures that allow us to make the necessary findings programmatically rather than permit by permit. When States and Tribes provide information showing that they have established a management program that ensures a sustainable harvest, and that they have the means to identify or mark specimens that have been legally taken under their system, we are able to make findings for specimens harvested within their jurisdiction and thereby approve their program. A tag or certificate issued by the State or Tribe demonstrates that a particular specimen was harvested under an approved program and that the appropriate findings have been made. This alternative to making the legal acquisition and non-detriment findings on a permit-by-permit basis reduces a potentially large workload for exporters as well as for our offices.

States and Tribes for which programmatic findings have been made submit annual reports to us containing information on the previous harvest season. In some cases, such as for some furbearer species, we make multi-year findings. Regular reporting from States and Tribes allows us to determine whether our findings remain valid. In these sections, we include the types of information we request from the States and Tribes on an annual basis to maintain approval of their export programs. A list of States and Tribes with approved CITES export programs, copies of recent findings on which the approvals are based, and conditions that must be met for lawful export will be posted on our website or will be available from us (see § 23.7).

Many commenters supported the provisions for approval of State and tribal export programs, but would like the FWS to make range-wide non-detriment findings, rather than State-by-State or Tribe-by-Tribe assessments. We approve programs for the export of American ginseng, furbearers, and crocodilians on a State-by-State or Tribe-by-Tribe basis because they are managed by individual States or Tribes. We require specific information about the population status and management of the species on those specific State and tribal lands. As discussed in § 23.61, a range-wide population assessment would be useful in making non-detriment findings because it would place the State or tribal programs in the context of species management and population status throughout its range. However, in making a non-detriment finding, we must determine whether there are effects from the export, including locally, that will impact the survival of the species. Generally, the information provided to the FWS by a State or Tribe is limited to the species' status in that State or tribal management area. If, however, sufficient information is provided by States and Tribes within the range of a particular species, we may review the information, in conjunction with other available information, on a range-wide basis. We have, for example, made a range-wide non-detriment finding for bobcat. We added provisions in § 23.69(b) to accommodate situations where the Scientific Authority has made a range-wide non-detriment finding.

The same commenters suggested that re-evaluation periods for range-wide findings should be no less than every 5 years. As discussed in the 2006 proposed rule (71 FR 20167), subsequent to programmatic approval for a State or Tribe, exports are approved as long as the periodic submission of information by the State or Tribe shows that there is no significant change in status or management of the species that might lead to different treatment of the species.

One commenter requested stronger language to mandate that States and Tribes provide relevant reports, and that the FWS disclose whether it has detected tag fraud for furbearers and alligators issued to the States and Tribes. We review the CITES furbearer and alligator activity reports received from each approved State or Tribe to determine if our programmatic findings remain correct or if the species needs closer monitoring. If an assessment of the information indicates that the population may be declining, we may request additional information from the States or Tribes to conduct a more comprehensive review to ensure that our findings are still valid. Violations in the use of tags are monitored by the Office of Law Enforcement and disclosure is subject to the rules and regulations governing release of investigative information.

American ginseng roots (§ 23.68): Most American ginseng, both collected from the wild and artificially propagated, is exported as roots. Ginseng root is exported in a much larger volume than any other native CITES plant species. Ginseng that has been legally harvested under State or tribal requirements is certified by the appropriate State or tribal authority prior to export. To document the legal origin of the material, State or tribal certificates must accompany the ginseng until the time of export from the United States.

We use two categories for ginseng, wild and artificially propagated, because CITES only recognizes these two categories. The permits we issue and our annual report to the CITES Secretariat use only these two classifications.

If an applicant wishes to export ginseng as artificially propagated even though it visually resembles wild ginseng, he or she must demonstrate that the ginseng indeed meets the criteria for artificially propagated plants. We note that the classification of ginseng as either wild or artificially propagated on export permits is only for CITES purposes and is not intended to indicate marketing categories or value of the roots. Furthermore, it does not preclude the use of additional categories by States and Tribes. We continue to monitor the use of additional categories by States and Tribes, and we may use such information in future decision making on ginseng exports as we evaluate the impact of trade on the viability of the wild populations.

States or Tribes no longer provide us in their annual reports an estimate of the average age of wild-harvested plants. Instead, the U.S. Scientific Authority uses roots-per-pound information provided by the States as an index to indicate shifts in age structure of harvested roots.

One commenter suggested that we modify § 23.68 (b)(1)(iii) so that State or tribal personnel would only inspect and certify wild-collected ginseng for export and not all wild-collected ginseng harvested on State or tribal lands. Since the majority of wild-collected ginseng is exported, having State or tribal officials inspect all ginseng harvested in a particular State will minimize the likelihood of under-aged or illegally obtained wild-collected roots being exported. Additionally, some States do not require inspection of wild-collected

ginseng for personal use, and ginseng that does not enter international commerce is not subject to CITES requirements.

One commenter asked us to provide the list of States and Tribes with approved ginseng programs in the regulations as well as on the FWS website (see § 23.7). It is easier to update the FWS website quickly, and therefore, we will provide the list of approved States and Tribes there. We do not believe it is necessary to provide the list in the regulations as well.

In the 2006 proposed rule (71 FR 20167), we proposed changing the annual report date from May 31 to May 1, to ensure that we receive information in time for us to make required CITES findings before the beginning of the next harvest season. Three commenters suggested that we not change the annual reporting date from May 31 to May 1, because it would require States to revise their existing ginseng laws and would decrease the amount of time ginseng dealers, States, and Tribes have to prepare the requested information. One of the commenters strongly supported our intention to complete the required CITES findings early. However, the commenter noted that the annual reports are one of many references the FWS considers in making the findings. The commenter is correct in that we consider additional information as well as information provided in the annual reports when making our non-detriment findings. However, under CITES we must also make a legal acquisition finding, which is largely based on information contained in the State reports. Based on further review of our requirements, and in consultation with the State program coordinators, we have decided to maintain the current May 31 reporting date.

CITES furbearers (§ 23.69): We define ''CITES furbearers'' to include bobcat, river otter, Canada lynx, and the Alaskan populations of gray wolf and brown bear. These species are included in Appendix II under the provisions of Article II(2)(b) of the Treaty because their parts, products, and derivatives are difficult to distinguish from certain similar CITES Appendix-I and -II species.

To streamline the export process for CITES furbearers, we review the programs that States and Tribes have set up for management and harvest. We approve programs for States and Tribes when they have provided information that allows us to make the required non-detriment and legal acquisition findings. Our non-detriment finding takes into account that the CITES furbearers are listed in Appendix II because of their similarity of appearance to species listed under Article II(2)(a) of the Treaty. These species are listed to ensure that trade in the species to which they are similar is effectively controlled. We are obligated, however, by the Treaty to ensure that such a species does not decline to the point that it qualifies to be treated as an Appendix-II species under Article II(2)(a) of the Treaty.

Under the current regulations, States and Tribes with approved programs must have procedures for placement of CITES export tags on fur skins. When a fur skin with a CITES tag is presented for export, the tag provides assurance that the fur was harvested under an approved CITES export program and that the necessary findings have been made. This allows the exporter to more quickly obtain CITES documents from either the U.S. Management Authority or certain FWS Law Enforcement offices (see § 23.7). However, there may be flexibility in whether furbearer skins must be tagged. The utility and effectiveness of the current U.S. CITES tagging regime has been the subject of ongoing discussions between the FWS and the States and Tribes. Through this process we are exploring other ways to demonstrate legal acquisition, for example, the possible use of a documentation system in lieu of tags, or issuance of a national legal acquisition finding based on State and tribal legal and enforcement systems. Any alternative system of determining legal acquisition must be as reliable as the current system. Many State fish and wildlife agencies and fur trapper associations endorsed efforts to develop an alternative to tags. We will continue to work with States and Tribes to explore other ways to provide evidence of legal acquisition.

We review the information we receive annually from each State or Tribe to determine if our programmatic findings remain correct or if the species needs closer monitoring. Article IV(3) of the Convention requires the Scientific Authority to monitor trade in any Appendix-II species, regardless of whether it is listed under the provisions of Article II(2)(a) or II(2)(b). Species listed in Appendix II are not designated as being listed for similarity of appearance (i.e., they are not designated as being listed under Article II(2)(a) or II(2)(b)), and the Convention lacks a mechanism for review of Appendix-II species to determine if they should continue to be listed under the provisions of Article II(2)(b). It is the responsibility of each range country to monitor its species listed under Article II(2)(b) and determine whether they subsequently qualify under Article II(2)(a).

Crocodilians (including American alligator) (§ 23.70): This section incorporates Resolution Conf. 11.12 and extends the tagging requirements to all crocodilian skins entering international trade, which assists Parties in identifying legal skins. Raw, tanned, or finished crocodilian skins may be imported, exported, or re-exported only if tagged with a non-reusable tag containing specific information. The requirements of the special rules in 50 CFR part 17 concerning the American alligator and other threatened crocodilians must be met in addition to the requirements of this section.

Like American ginseng and native CITES furbearers, we have developed specific CITES procedures for States and Tribes with an approved conservation program for the American alligator. As part of the reporting required under the program, participating States and Tribes provide us with information on how many alligators were taken during the wild harvest and how many alligators were harvested from farming facilities.

One commenter questioned why the requirements for marking of American alligator meat and skulls are different from those for other crocodilians. When we incorporated the marking requirements from the special rules in part 17 into this section, we did not change those requirements. The marking requirements for American alligator meat and skulls were developed to accommodate different State marking requirements.

Two commenters asked us to develop a system to expedite issuance of export permits for American alligator skins, similar to the process in place for Appendix-III turtles. The system in place for Appendix-III wildlife is not appropriate for Appendix-II wildlife. Export of specimens listed in Appendix III, including certain turtle taxa native to the United States, requires only a legal acquisition finding. By contrast, American alligators are listed in Appendix II, and therefore, we must make a non-detriment finding in addition to a legal acquisition finding before issuing an export permit.

Sturgeon caviar (§ 23.71): At CoP10, all sturgeons that were not already included in the CITES Appendices were added to Appendix II. This section implements Resolution Conf. 12.7 (Rev. CoP13), including requirements for labeling of caviar containers, provisions for shared populations subject to annual export quotas, and re-export timeframes for caviar.

To assist Parties in identifying legal caviar in trade, the resolution

recommends a universal labeling system. Sturgeon caviar may be imported, exported, or re-exported only if non-reusable labels containing specific information are affixed to primary and secondary containers. If caviar is repackaged before export or re-export, the containers must be re-labeled to reflect the change.

To improve monitoring of re-exports in relation to the original export permits, the Parties agreed to establish time limits for re-exporting caviar. We require that any re-export of caviar take place within 18 months from the issuance date of the original export permit. We also clarify that caviar and caviar products that contain the roe of more than one species may only be imported into or exported from the United States if each species is identified and the quantity of each species is specified on the CITES document. In the final rule, we amended § 23.71(g) to more clearly describe this requirement and to underscore that we include products made with caviar under this paragraph.

To assist in monitoring the level of exports in relation to annual export quotas and to address certain unscrupulous trade practices, the Parties agreed to place a time limit on export of caviar from shared stocks subject to quotas. We allow import of sturgeon caviar from shared stocks subject to quotas only during the calendar year in which it was harvested.

Personal sport-hunted trophies (§ 23.74): This section defines ''sport-hunted trophy'' and outlines the requirements for trade in sport-hunted trophies, including the use of a sport-hunted trophy after import (see § 23.55). Some countries allow limited take of Appendix-I species as part of an overall management plan. The Parties have agreed to allow international movement of such trophies provided they are for the hunter's personal use. The export of Appendix-I hunting trophies requires both export and import permits under Article III of the Treaty (see § 23.35). This practice is re-affirmed in Resolution Conf. 2.11 (Rev.).

We defined ''sport-hunted trophy'' to provide the public with a clear understanding of what we consider to be included in the term. The definition does not include handicraft items or items manufactured from the trophy used as clothing, curios, ornamentation, jewelry, or other utilitarian items. We based this definition on our experience with international trade in these items and the commonly understood meaning of the term from the dictionary and other wildlife regulations. The definition is similar to one used in 50 CFR part 18 (marine mammals) for sport-hunted polar bear trophies, which was developed to ensure that the trade in trophies was consistent with CITES. We considered language from a House Committee Report (H.R. Rep. No. 439, 103rd Cong., 2nd Sess. (1994)) that states ''trophies normally constitute the hide, hair, skull, teeth, and claws of an animal that can be used by a taxidermist to create a mount of an animal for display or tanned for use as a rug.''

Two commenters supported our definition, but one did not agree that sport-hunted trophies should be considered personal effects. This commenter suggested that we remove the phrase ''for personal use'' from the definition. As stated above, the Parties have recognized that trade in certain Appendix-I specimens and annotated Appendix-II specimens is allowable provided that the specimen is a personally hunted trophy that will not be used for commercial purposes. We believe our definition, as written, supports the intent of the Parties. The same commenter encouraged us to add this definition to the general definition section (§ 23.5) as well. We defined some terms that apply to a specific type of trade, such as ''sport-hunted trophy,'' in the sections where they are used rather than in the general definition section (§ 23.5) for efficiency. We do not believe it is appropriate to restate the definition in two places.

Two commenters believed that items manufactured from a trophy should be included in the definition. They expressed concern that our definition would preclude hunters from bringing such items into the United States because they would be considered commercial. We do not agree that utilitarian items manufactured from a trophy should be considered a trophy. In a number of instances, large quantities of fully manufactured products, such as briefcases, handbags, and golf bags, have been imported as parts of a ''hunting trophy.'' Since we accord a noncommercial status to personal sport-hunted trophies, we must be able to distinguish between a noncommercial trophy and commercial products derived from an animal that may or may not have been taken by the hunter as a sport-hunted trophy.

This does not mean that the import or export of utilitarian items made from a trophy is not allowed. Provided that the items are not identified as a sport-hunted trophy, manufactured items of Appendix-II and -III species may be imported into the United States or exported from the United States with CITES export or re-export documents that indicate an appropriate purpose code (e.g., ''P'' for personal or ''T'' for commercial). The purpose code ''H'' (sport-hunted) may not be used. However, the Parties have established greater controls over the international movement of Appendix-I specimens. As with Appendix-II or -III species, manufactured items produced from an Appendix-I species outside the United States could be imported provided that all of the required findings have been made and the items are not identified as a sport-hunted trophy.

We also included specific conditions for import, export, or re-export of leopard, markhor, and black rhinoceros hunting trophies as provided in Resolutions Conf. 10.14 (Rev. CoP13), Conf. 10.15 (Rev. CoP12), and Conf. 13.5, respectively. In any calendar year, a hunter may import no more than two leopard trophies, one markhor trophy, and one black rhinoceros trophy. Any tagging or marking requirements for skins, horns, or other parts of trophies, mounted or loose, must also be met. We added a description of tag locking requirements and tagging requirements for mounted sport-hunted trophies to § 23.74(d)(i). These requirements are in addition to any requirements in 50 CFR part 17. One commenter requested that we clarify that the limits on the number of certain sport-hunted trophies that may be imported in a given year apply to an individual hunter. We amended § 23.74(d) accordingly.

Two commenters were opposed to all trophy hunting and recommended that we prohibit the import of all sport-hunted trophies listed in the CITES Appendices. This issue was addressed in the 2006 proposed rule (71 FR 20167). CITES did not intend to ban the trade in sport-hunted trophies, and we do not have the authority to impose a ban on the import of any CITES species without legal or scientific justification.

What Are the Changes to Subpart F of 50 CFR Part 23—Disposal of Confiscated Wildlife and Plants?

Confiscated specimens (§ 23.78): Article VIII(4) and (5) of the Treaty outline the requirements for disposal of confiscated live specimens, and the Parties adopted Resolution Conf. 10.7, which set out detailed guidance. Our general procedures for disposal of forfeited or abandoned property, under CITES as well as other U.S. laws, are contained in 50 CFR part 12, 7 CFR part 356, and 19 CFR part 162. Section 23.78 outlines the process we use in making a decision on how to dispose of confiscated live CITES wildlife and plants that have been forfeited or abandoned to FWS Law Enforcement, APHIS, or CBP.

We consider a number of factors, and consult the guidance in Resolution Conf. 10.7, when determining how to dispose of confiscated live specimens. The most important factor we consider is the welfare of the wildlife or plants. Generally, the disposal options are maintenance in captivity or cultivation, return to the wild, and euthanasia or destruction. In the absence of other options, euthanasia or destruction may be the most humane or appropriate option. Although under Article VIII of the Treaty, returning confiscated live specimens to the country of export is one available option, we cannot always return them. For example, when criminal charges are brought in connection with confiscated specimens, litigation may require us to hold the specimens as evidence for an extended period of time, and the court may decide how we are to dispose of them.

Return to the wild of confiscated specimens is rarely possible. It can carry risks for existing wild populations, such as introduction of disease, and can result in the death of the specimens released due to starvation, disease, or predation. Before considering return to the wild, a country must decide if that action would make a significant contribution to the conservation of the species or might be harmful to the conservation of the species in the wild. In many countries, including the United States, some confiscated specimens are donated to zoos, aquariums, or botanical gardens. This option may not be available when a seizure involves a large number of common species. Both the botanical and zoological communities recognize that placing specimens of low conservation value in limited space may benefit those individuals, but may detract from conservation efforts as a whole.

To comply with the intent of Resolution Conf. 9.10 (Rev. CoP13) and, in limited circumstances, to return confiscated live Appendix-I specimens to the country of export, we included an issuance criterion for re-export of confiscated specimens in § 23.37(c)(5). It requires us, before issuing a re-export certificate, to find that the proposed re-export of confiscated specimens would not be detrimental to the survival of the species. Regulations in 50 CFR part 12 allow for the sale of confiscated Appendix-II and -III wildlife and plants. When specimens have been confiscated and subsequently sold or transferred by the U.S. Government, we consider them legally acquired when the applicant provides the appropriate documentation to show the origin of the specimens. However, because the specimens were imported without the proper CITES documents, we must make the biological finding, which normally would have been made prior to export, before issuing a re-export certificate.

Two commenters urged us to develop an action plan for the disposal of confiscated live specimens, as is recommended in Resolution Conf. 10.7. As noted in the 2006 proposed rule (71 FR 20167), due to the complexity of issues involved in placing seized specimens, the FWS makes disposition decisions on a case-by-case basis.

One commenter asserted that we should strictly control the breeding and disposition of any progeny for any wildlife specimen placed with a zoo, sanctuary, or care facility. All live wildlife placed with a zoo, sanctuary, or similar care facility is accompanied by a loan or donation document as described in 50 CFR part 12 that may include restrictions on use or disposition of the animal. We may also place restrictions on breeding of the animal or disposition of the animal and any progeny, as appropriate.

One commenter urged us to place confiscated specimens in scientific collections with restrictions on their transfer rather than re-export them back to the country of export. Another commenter expressed concern regarding the option of selling confiscated Appendix-II and -III specimens. Under these regulations, as well as under 50 CFR part 12, the FWS disposes of confiscated specimens on a case-by-case basis after considering the most appropriate option. See 50 CFR part 12, subpart D, for the criteria we use when considering the appropriate disposition of abandoned and forfeited wildlife and plants, including the order of preferred disposal methods.

One commenter remarked on the impracticality of re-exporting seized specimens to the country of export. The commenter cited an instance where seized specimens were re-exported to the country of origin, but despite efforts to maintain the specimens, they could not be salvaged once they arrived in the country of export and had to be discarded. The commenter recommended that the FWS place seized specimens in scientific collections in the United States and restrict the use of the specimens to prevent them from being transferred to the intended importer.

We believe that the re-export of confiscated specimens to the country of origin or re-export is an appropriate option for certain specimens. Although the commenter cited an instance where specimens could not be salvaged, we have successfully re-exported many confiscated specimens to the country of export. We decline to incorporate a mandate for the placement of confiscated specimens only with scientific institutions. We must retain the ability to determine the most appropriate disposition of confiscated specimens based on specific facts of the case.

Two commenters argued against returning confiscated live specimens to the wild. One maintained that returning raptors is only successful in the context of a well-organized and carefully implemented translocation program. The other commenter noted that reintroduction programs require careful organization and implementation. That commenter also noted that returning confiscated live wildlife to the country of origin was often not realistic, noting that adequate facilities for caring for the live specimens may not exist. We have clarified under what limited circumstances we would return confiscated specimens to the wild. With regard to the return of confiscated live specimens to the country of origin, Resolution Conf. 9.10 (Rev. CoP13) recommends that confiscated specimens be returned to the country of origin or re-export when the Scientific Authority of the confiscating State deems it in the interest of the specimens to do so, and the country of origin or re-export requests that the specimens be returned. The United States follows this recommendation in determining if it is appropriate to return confiscated specimens to the country of origin or re-export.

One commenter argued that we should not allow confiscated live wildlife specimens to be given to scientific institutions unless the institution does not intend to use the specimen for invasive scientific research. The commenter further argued that we should not place such specimens with any organization that operates a traveling exhibition. The commenter noted particular concern regarding the regulations in 50 CFR part 12 that allow for the sale of confiscated Appendix-II and -III wildlife and plants. The commenter believed that this option might cause the FWS to overlook other disposal options such as return to the country of origin. As previously discussed, the options available in 50 CFR part 12 are ordinarily exercised in the order in which the methods are outlined. Sale and destruction are the final options to be exercised, and any sale must be in accordance with Federal Property Management Regulations and Interior Property Management regulations.

What Are the Changes to Subpart G of 50 CFR Part 23—CITES Administration?

Development of U.S. documents and negotiating positions for a CoP (§ 23.87): This section outlines the process we follow in developing documents for submission to the CoP and our negotiating positions, including how the public can participate in this process. We will outline what the United States is considering and our proposed negotiating positions on agenda items and proposals from other countries either through **Federal Register** notices or postings on our website (see § 23.7). We will also hold one or more public meetings to discuss these issues. However, we will not publish final negotiating positions because some issues are extremely complex and require extensive coordination, and our final negotiating positions may not be available prior to the CoP. We hold daily briefings at the CoP for U.S. observers, where we often discuss our tentative negotiating positions and any changes to them. We no longer publish an official report after each CoP because information on the results of a CoP is available from a number of sources, such as the CITES website (see § 23.7). Consequently, the production of a separate report has become duplicative and unnecessary.

One commenter noted that we did not indicate a timeframe for providing a summary of our proposed negotiating positions in preparation for a CoP. The commenter suggested that we provide our proposed negotiating positions at least 2 weeks prior to the start of a CoP to allow sufficient time for public input and comment. Although we make every effort to provide our proposed negotiating positions sufficiently in advance of a CoP, it is not always possible, and we have declined to adopt this suggestion.

Another commenter opposed our proposal not to make our final negotiating positions available prior to a CoP. We believe that this comment is adequately addressed in the 2006 proposed rule (71 FR 20167) and refer the commenter to that document for further clarification.

Resolutions and decisions (§ 23.88): This section provides the legal basis and purpose of resolutions and decisions. We have implemented Resolution Conf. 4.6 (Rev. CoP13), which establishes that a resolution or decision becomes effective 90 days after the meeting at which it is adopted, unless the resolution or decision specifies a different date.

One commenter recommended that we clarify that the effective date of resolutions and decisions adopted at a CoP is 90 days after the last day of the meeting at which they were adopted. We agree with the commenter and have revised the final rule accordingly.

What Are the Changes to Subpart H of 50 CFR Part 23—List of Species?

Listing criteria for Appendix I or II (§ 23.89): We intend that the listing criteria identified in this section will faithfully track the criteria and principles set out in Resolution Conf. 9.24 (Rev. CoP13). If that resolution is substantially modified at a future CoP, then we may propose amendments to this section to maintain our science-based interpretation of criteria for the addition or removal of species from Appendices I and II.

A number of falconers argued that not all Falconiformes should be included under CITES, but only those species that are endangered or threatened. These regulations do not address specific listings in the Appendices. However, through a series of **Federal Register** notices and public meetings, individuals and organizations have an opportunity to participate in U.S. preparations for a CoP and should provide information on potential listing proposals through those means.

One commenter questioned our statement regarding the use of precautionary measures to ensure that scientific uncertainty is not a reason for failing to act in the best interest of the conservation of the species when considering a listing proposal. The commenter argued that if adequate information to evaluate conservation needs is lacking, it is difficult to determine those needs. The commenter asked how proposals under these circumstances should be evaluated. The statement to which the commeter refers is taken from the concept described in Annex 4 to Resolution Conf. 9.24 (Rev. CoP13). In evaluating the need to list a species in the Appendices, we use the best available information. However, in applying precautionary measures, we may still take a listing action when the best available information suggests the action is warranted despite incomplete information.

Exemptions (§ 23.92): This section provides details on what materials are exempt. Upon import, export, or re-export, you may be required to demonstrate that your specimens qualify as exempt under this section. One commenter stated that tissue, blood, and serum collected at the time of necropsy for diagnostic testing should not require permits under CITES. Although Parties have proposed exempting such specimens in the past, no consensus has been reached on such an exemption. Consequently, tissue, blood, and serum are not exempt from CITES requirements.

Another commenter indicated that our text regarding annotated Appendix-III wildlife (§ 23.92 (b)(1)) and Appendix-II or -III plant species (§ 23.92 (b)(2)) was confusing. Upon review of this section we realized these paragraphs did not accurately reflect our current practice. As a result, we combined (b)(1) and (b)(2) from the 2006 proposed rule (71 FR 20167) into one paragraph so that it is clear that for Appendix-III wildlife and Appendix-II or -III plant listings we consider all parts, products, or derivatives to be covered (and thus to require CITES documents) unless they are annotated to indicate otherwise. We also added references in (b)(2) and (b)(3) to the section on artificially propagated plants to underscore the fact that these specimens must qualify as artificially propagated under § 23.64.

Required Determinations

Regulatory Planning and Review: The Office of Management and Budget (OMB) has determined that this is a significant regulatory action under Executive Order 12866 because it may raise novel legal or policy issues. Therefore this rule has been reviewed by OMB.

a. This rule will not have an annual economic effect of $100 million or negatively affect a part of the economy, productivity, jobs, the environment, or other units of government. An assessment to clarify the costs and benefits associated with this rule follows. The purpose of this rule is to clarify and update the regulations that implement CITES. It is designed to assist individuals and businesses who import and export specimens of CITES species by clearly outlining the requirements that the United States, as well as the other 170 Parties, must follow under the Convention. As of February 1, 2007, our records show there are approximately 9,800 active U.S. CITES documents (the period of validity for documents ranges from 6 months to 3 years). In the United States, the percentage of CITES documents issued for various uses is generally as follows: 34 percent hunting trophies; 19 percent commercial wildlife; 18 percent personal use; 8 percent scientific research; 6 percent commercial plants; 6 percent zoological parks; 5 percent breeding; 3 percent circuses; and 1 percent miscellaneous.

The overwhelming majority of countries that trade internationally in

wildlife and plants are CITES Parties. Because most of these Parties are currently implementing the Convention and the current CITES resolutions and decisions, this rule should cause little or no impact for importers or exporters. The foreign suppliers are, in most cases, already required by their own country's laws to follow the Convention as well as the current CITES resolutions and decisions. In addition, if a U.S. importer were to receive a shipment that did not comply with all of the requirements of the country of export, the import may violate the Lacey Act Amendments of 1981. Exporters need to comply with the requirements of the importing country in addition to U.S. requirements. If a shipment is not in compliance with all applicable laws, it may be seized, detained, or refused clearance at its destination. These revisions include clarifications of the Convention's provisions that have not previously been published. Thus, U.S. businesses are already complying with most of the revisions. Revisions that would impact current business practices are addressed below.

We do not expect that this rule will have a significant effect on the volume or dollar value of wildlife and plants imported, exported, or re-exported to and from the United States. There is no indication that this rule will result in changes in levels of trade, permit applications, or permit issuance or denial that are statistically significant.

Many of the costs incurred by industry would be associated with changes to required information collections. These are annual, periodic, or one-time collections. The costs presented represent the estimated yearly costs for all types of collections. Refer to the ''Paperwork Reduction Act'' section for more details. The yearly cost associated with new information collections described in the rule is $34,063 ($2,813 in value of burden hours + $31,250 in application fees). The 10–year quantitative cost is $340,630 ($299,281 discounted at 3 percent or $255,991 discounted at 7 percent). We do not anticipate that this rulemaking will have a significant effect on permit application processing time for CITES documents issued under 50 CFR part 23. We do not expect administrative costs to increase.

Costs not associated with information collections are more difficult to quantify. These costs include (1) the need for operations that are breeding Appendix-I wildlife for commercial purposes to become registered, (2) the need for facilities that are breeding Appendix-I wildlife for noncommercial purposes to participate in a cooperativeconservation program, (3) conditioned noncommercial use of Appendix-I and certain Appendix-II and -III specimens after import into the United States, and (4) the need to label sturgeon caviar and re-export caviar within 18 months from the date of the issuance of the original export permit.

To comply with Article II of the Treaty, which states that Appendix-I specimens ''...must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances,'' we no longer allow the use of Article III of the Treaty for commercial export of Appendix-I wildlife. This new provision means that operations that are breeding Appendix-I wildlife for commercial purposes under Article VII(4) of the Treaty need to become registered. This does not affect the sale of specimens within the United States, only the commercial export of such specimens; it also does not preclude the export of specimens when the export is not commercial, such as for scientific, conservation, or personal use.

Wildlife may be exported with a certificate under the bred-in-captivity exemption of Article VII(5). However, at CoP12, the Parties agreed that for facilities to qualify as breeding Appendix-I species for noncommercial purposes, they must be participating in a cooperative conservation program with one or more of the range countries for that species. Otherwise, if a facility is not cooperating with a range country, they are considered to be breeding for commercial purposes. We adopted this new provision to ensure that trade in Appendix-I species will not be detrimental to the survival of the species in the wild. Many Appendix-I species also are listed under the ESA, and an export permit may be issued only when the activity will provide for the conservation of the species. Thus, we do not expect administrative costs to increase for facilities that want to export Appendix-I species bred for noncommercial purposes.

Unless an Appendix-I wildlife or plant specimen qualifies for an exemption under Article VII of the Treaty, it may be imported only when the intended use is not for primarily commercial purposes. In addition, the Parties agreed that Appendix-I trophies may be ''imported as personal items that will not be sold in the country of import'' (Resolution Conf. 10.14 (Rev. CoP13) for leopards, Resolution Conf. 10.15 (Rev. CoP12) for markhor, and Resolution Conf. 13.5 for black rhinoceros). We incorporated into 50 CFR part 23 a provision that Appendix-I specimens and certain Appendix-II and -III specimens may not be imported and subsequently used for a commercial purpose. This provision is to prevent commercial use after import when the trade allowed under CITES is only for a noncommercial purpose. The provision applies to Appendix-II specimens that are subject to an annotation that allows noncommercial trade of sport-hunted trophies, such as the African elephant populations of Botswana, Namibia, South Africa, and Zimbabwe. Under this rule, these types of trophies may be imported for personal use only and may not be sold or otherwise transferred for economic use, gain, or benefit after import into the United States. From 2001 to 2005, the number of African elephant trophies imported into the United States annually ranged from 265 to 352. During the same time period, annual imports of leopard trophies ranged from 413 to 507.

We implemented changes in requirements for trade in sturgeon caviar agreed at CoP12 and CoP13. We require that all caviar be labeled in accordance with Resolution Conf. 12.7 (Rev. CoP13) and any re-exports of caviar take place within 18 months from the date of issuance of the original export permit. We believe these procedures are consistent with current industry practices and will not cause any additional burden to applicants.

The publication of this final rule will assist U.S. businesses in complying with CITES requirements when engaging in international wildlife trade. Many of the benefits associated with the rule are due to clarified regulations. Benefits include (1) streamlining procedures for traveling exhibitions, (2) establishing application procedures for registration of operations breeding Appendix-I wildlife species for commercial purposes, (3) issuing a bred-in-captivity certificate that eliminates the need to obtain an import permit, (4) using standardized coral nomenclature to simplify procedures and therefore provide relief to entities that trade in coral internationally, (5) informing the public about proper CITES documents and procedures for international travel with personally owned live wildlife (e.g., pets), (6) streamlining procedures to issue permits for trade that would have a negligible impact or no impact on the conservation of the permitted species and that is repetitive in nature, (7) simplifying procedures for shipment of sample collections under an ATA carnet, and (8) exempting certain wildlife hybrids and urine, feces, and synthetically derived DNA from CITES requirements. These benefits are presented qualitatively below.

We expect the regulations to provide relief by streamlining the CITES document procedures for traveling exhibitions. At CoP8, the Parties agreed to issue CITES documents for live animals that qualify as pre-Convention or bred in captivity and that travel internationally as part of an exhibition. The document is to be treated like a passport and allows the exhibitor to use the same CITES document to cross multiple borders, rather than having to obtain a new document for each border crossing. This CITES document is valid for 3 years rather than 6 months like a standard export permit. At CoP12, the Parties agreed to extend these provisions to all traveling exhibitions, not just traveling live-animal exhibitions. We incorporated provisions for traveling exhibitions into these regulations and defined the term traveling exhibition to include live animals and plants and dead items (e.g., herbarium specimens and museum specimens). We estimate that 50 permittees would be affected by this procedure, although we do not categorize permittees as traveling exhibitors in our records and, therefore, are not able to quantify the precise effect of this relief.

We have also implemented Resolution Conf. 12.10 (Rev. CoP13) and established application procedures for an operation breeding Appendix-I wildlife species for commercial purposes to become registered for each Appendix-I species. Specimens that originate from registered facilities may be granted export permits or re-export certificates without the issuance of an import permit. This provides some economic relief by allowing specimens from registered facilities to be imported for commercial purposes, trade which is otherwise prohibited by the Treaty for Appendix-I specimens. The registration fee in 50 CFR part 13 is set at $100. To date, the United States has registered four operations breeding Appendix-I species for commercial purposes. During 2005 and 2006, these four facilities combined exported a total of 18 shipments per year. We anticipate that 15-20 operations would seek to be registered initially.

We adopted the definition of ''bred for noncommercial purposes'' in Resolution Conf. 12.10 (Rev. CoP13) for Appendix-I wildlife. Facilities that are breeding for noncommercial purposes must participate in a cooperative conservation program with one or more of the range countries for that species. Qualifying applicants are issued a bred-in-captivity certificate that eliminates the need to obtain an import permit. The number of facilities exporting Appendix-I wildlife is relatively small. In 2006, we issued about 200 CITES documents to export Appendix-I specimens.

We exempted coral sand and coral fragments from CITES requirements, because the Parties have recognized the difficulty in identifying these coral specimens. The Parties also agreed to the use of higher-taxon names (broader classification) for coral rock and live and dead coral under certain conditions. We willaccept a CITES document that uses a higher-taxon name for coral when the CoP has agreed to its use. A current list of acceptable higher-taxon names for coral is available on the CITES website or from us (see § 23.7). We anticipate that the use of this standardized nomenclature and the exemption of coral sand and coral fragments from CITES requirements will simplify procedures and therefore provide relief to entities that trade in coral internationally. Because we are uncertain how much of the trade would be affected by these changes, we are unable to quantify their impact.

Resolution Conf. 10.20 provides for the issuance of certificates for personally owned live wildlife that would be valid for a period of 3 years and allow for multiple imports, exports, and re-exports of the covered specimens. The final rule advises travelers that they must have a CITES document to travel with their CITES-listed personally owned live wildlife, and it provides procedures for the issuance of these CITES documents. Individuals importing live CITES wildlife for personal use are required under this rule to obtain a CITES document prior to arriving in the United States. Since most Parties require CITES documents for international trade of all live specimens, this requirement will ensure that pet owners are not inadvertently violating the Lacey Act Amendments of 1981 by exporting a CITES species without having obtained the required CITES permits. Although we can issue and accept retrospective documents under limited circumstances for activities that have already occurred, the practice is discouraged. On average, we issue about 20 retrospective documents for personal shipments, including live wildlife, annually. These revised regulations will not impose an additional paperwork or financial burden on pet owners or falconers, but may actually save time and money by clearly informing travelers of CITES requirements.

This rule will provide relief to permit applicants by streamlining procedures to issue permits for trade that would have a negligible impact or no impact on the conservation of the permitted species and that is repetitive in nature (i.e., the same type of specimens or the same actual specimens are exported shipment after shipment). Examples include biomedical companies shipping biological samples derived from cell lines they maintain and production facilities exporting certain native Appendix-II and Appendix-III species. In the past, in an effort to facilitate the timely movement of such specimens, we have issued multiple-use export documents that could be photocopied for use with multiple shipments. However, many countries no longer accept photocopied documents. Thus, we have implemented streamlined procedures adopted at CoP12 and issue partially completed documents under specific circumstances. We do this by establishing a master file for a permittee and then issue multiple documents based on information in the master file. The permittee is authorized to complete specifically identified boxes on the document and is required to sign the document to certify that the information entered is true and correct. For U.S. documents, an applicant must submit the appropriate application form for the proposed activity and show that the use of this type of document is beneficial to both the applicant and to the Service. We can issue multiple partially completed documents when we find that the issuance criteria for the proposed activity and the issuance criteria for a partially completed document are met. In 2005, we issued approximately 3,200 partially completed documents. In 2006, the number increased to around 9,300 documents. Although the creation of a master file has somewhat increased the initial burden for applicants, the subsequent issuance of documents under a master file is streamlined. In addition, this process has brought our procedures into line with most other CITES Parties, which will no longer accept multiple-use export documents.

This final rule will provide relief to applicants whotravel internationally with collections of display samples, such as sets of shoes or reptile skin samples. At CoP13, the Parties agreed to allow the in-transit shipment of such collections under specific conditions. We can issue a CITES document that will allow these sample collections to move from one country to another before returning to the originating country, rather than requiring the issuance of a re-export certificate from each country visited. Such a CITES document must be accompanied by a valid ATA carnet. An ATA carnet is an

international customs document that allows the temporary introduction of goods destined for fairs, shows, exhibitions, and other events. We estimate that approximately 50 applicants will benefit from this simplified procedure.

Under this rule, we require CITES documents to accompany most wildlife hybrids that are imported, exported, or re-exported. Certain wildlife hybrids will no longer require CITES documents if they meet a limited exemption. We generally receive fewer than 50 inquiries concerning exempt hybrids annually.

We have exempted urine, feces, and synthetically derived DNA of CITES species from CITES requirements under certain circumstances. We consider samples of urine and feces to be wildlife byproducts, rather than parts, products, or derivatives, and therefore do not require CITES permits for the international movement of these specimens unless a permit is required by the other country involved in the trade. This exemption applies only to synthetically derived DNA. DNA extracted directly from blood and tissue samples must comply with all CITES permitting requirements. Because we do not maintain records on the trade in these specimens, we are unable to estimate the impact of this exemption.

b. This rule will not create inconsistencies with other agencies' actions. As the lead agency for implementing CITES in the United States, we are responsible for monitoring imports and exports of CITES wildlife and plants, including their parts, products, and derivatives, and issuing import and export documents under CITES.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. OMB has determined that this rule raises novel legal or policy issues. As a Party to CITES, the United States is committed to fully and effectively implementing the Convention. This rule clarifies the requirements for the import, export, and re-export of CITES specimens and informs individuals and businesses of the current requirements.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), 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) (5 U.S.C. 601 *et seq.*). 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.

The U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard. To assess the effects of the rule on small entities, we focus on industries that may have businesses that import, export, or re-export CITES specimens. Many of these businesses can be placed in the following categories: Zoos and Botanical Gardens with an SBA size standard of $6.0 million in average annual receipts; Merchant wholesalers, nondurable goods, with an SBA size standard of 100 employees; Leather and allied product manufacturers, with an SBA size standard of 500 employees; and Clothing and Clothing Accessories Stores, with an SBA size standard ranging from $6.0 million to $7.5 million in average annual receipts. The U.S. Economic Census does not capture the detail necessary to determine the number of small businesses that are engaged in international commerce in CITES species. However, we expect that the overwhelming majority of the entities involved with this type of commerce would be considered small as defined by the SBA. The declared value for U.S. trade in CITES wildlife (not including plants) was $345 million in 2002, $394 million in 2003, $1.5 billion in 2004 (including one export of a single panda to China with a declared value of $1 billion), and $737 million in 2005.

These new regulations create no substantial fee or paperwork changes in the permitting process. Any increase in costs due to information collections is expected to be minimal. Response time for new information collections will vary from 6 minutes to 30 minutes per response, and new application fees range from free to $100. The regulatory changes are not major in scope and would create only a modest financial or paperwork burden on the affected members of the general public.

This rule also benefits these businesses by providing updated and more clearly written regulations for the international trade of CITES specimens. We do not expect these benefits to be significant under the Regulatory Flexibility Act. The authority to enforce CITES requirements already exists under the ESA and is carried out by regulations contained in 50 CFR part 23. The requirements that must be met to import, export, and re-export CITES species are based on the text of the Convention, which has been in effect in the United States since 1975.

Therefore, we have determined that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act: This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. As discussed above, this rule:

a. Does not have an annual effect on the economy of $100 million or more. This rule provides the importing and exporting community within the United States updated and more clearly written regulations that implement CITES in the United States. This rule will not have a negative effect on this part of the economy.

This final rule will affect all importers, exporters, and re-exporters equally, and the benefits of having updated guidance on complying with CITES requirements will be evenly spread among all businesses, whether small or large. There is not a disproportionate share of benefits for small or large businesses.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, tribal, or local government agencies; or geographic regions. This rule clarifies and updates the regulations that implement CITES and, therefore, will provide benefits to all permit applicants in terms of time savings. However, this rule may result in a small increase in the number of applications and processing fees for circuses, pet owners trading in CITES animal species, commercial breeding operations for appendix-I species, and entities currently exporting under multiple-use permits. This rule also proposes to establish processing fees for the following application types:

introduction from the sea ($100) and registration of commercial breeding operations for Appendix-I species ($100). We anticipate fewer than 30 applicants will be affected annually by these new fees.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule will enable U.S. importers and exporters of CITES species to better understand and comply with the regulations covering international trade in CITES wildlife and plants. Without these revisions to the regulations, the U.S. importing and exporting community may not be able to compete effectively with foreign-based companies in the international trade of CITES specimens. This rule will assist U.S. businesses in ensuring that they are meeting all current CITES requirements, thereby decreasing the possibility that shipments may be delayed or even seized in another country that has implemented CITES resolutions not yet incorporated into U.S. regulations.

Unfunded Mandates Reform Act: Under the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This final rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. As the lead agency for implementing CITES in the United States, we are responsible for monitoring import and export of CITES wildlife and plants, including their parts, products, and derivatives, and issuing import and export documents under CITES. The structure of the program imposes no unfunded mandates. Therefore, this rule has no effect on small governments' responsibilities. This rule affects States only as described below, concerning export programs for certain native species listed under CITES.

Some rural communities rely on the added income produced by harvesting and selling certain CITES species that occur in the United States, such as the American alligator, American ginseng, bobcat, river otter, Canada lynx, brown bear, and gray wolf. The majority of consumer products made from these species are processed and manufactured overseas. During 2001-2005, annual exports of animal skins under the CITES export programs ranged from approximately $29 to $61 million. Annual exports of American ginseng during the same timeframe ranged from approximately $41 to $111 million. We have not changed the existing regulations for export from these programs (although, in the future, we may eliminate the need for export tags on skins of certain native furbearers) and, therefore, do not anticipate any change in economic effects or current activities.

States have the right and responsibility to manage their wildlife and plants. Many States have monitored the harvest of CITES species since before the Convention came into effect. We have worked with States and Indian Tribes to use the information they collect to make CITES findings on a State or tribal basis where export program approval is requested. This allows us to make findings for all specimens of a particular species from a State or Tribe rather than requiring each individual applicant to supply the information we need to make legal acquisition and non-detriment findings. We supply States and Tribes that have approved programs for the export of skins with CITES export tags at no charge. These tags are placed on each skin under State- or Tribe-monitored conditions or regulations. The presence of a tag on a skin indicates that the skin was taken under an approved program and that the necessary findings have been made. By making programmatic findings, we reduce the amount of paperwork required considerably and, thus, allow exporters of these species to benefit from streamlined export procedures. Export from a State or from tribal lands where there is not an approved program is also allowed. However, where there is no approved program, each applicant must complete the standard application for export (rather than the streamlined application for export from approved programs) and must provide all information necessary to determine that the specimens were legally acquired and that their export would not be detrimental to the survival of the species.

In this rule, we provide the criteria we use in making decisions to approve a program. These criteria are consistent with those that we currently employ in making such findings, and program approval will continue to function as it does now. This final rule provides the public with information on how the Service makes findings regarding State and tribal programs.

These updated CITES regulations will assist those who rely on income from the export of certain native CITES species by providing clear, updated requirements for international trade, thus allowing them to remain competitive when conducting business in international markets. This final rule provides the importing and exporting community a better opportunity for obtaining economic gain from international business in CITES specimens.

b. This rule will not produce a Federalrequirement of $100 million or greater in any year and is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings: Under Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. This rule is not considered to have takings implications because it does not further restrict the import, export, or re-export of CITES specimens. Rather, the rule updates the regulations for the import, export, and re-export of CITES specimens, which will assist the importing and exporting community in conducting international trade in CITES specimens.

Federalism: The revisions to part 23 do not contain provisions that have Federalism implications significant enough to warrant preparation of a Federalism Assessment under Executive Order 13132.

Civil Justice Reform: Under Executive Order 12988, the Office of the Solicitor has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Specifically, this rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize potential disagreements, provides a clear legal standard for affected actions, and specifies in clear language the effect on existing Federal law or regulation.

Paperwork Reduction Act: This final rule contains information collections for which OMB approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 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. The information collections associated with this rule will be used to evaluate applications for CITES documents and registrations. We will use the information to make decisions on the issuance, suspension, revocation, or denial of CITES documents and registrations.

The majority of the information collection associated with this rule has been approved under OMB control number 1018-0093. Forms approved under 1018-0093 include 3-200-19, 3-200-20, 3-200-23 through 3-200-37, 3-200-39, 3-200-43, 3-200-46 through 3-200-48, 3-200-52, and 3-200-53, 3-200-58, 3-200-61, 3-200-64 through 3-200-66, 3-200-69, 3-200-70, 3-200-73, and 3-200-76.

We developed new application forms for single-use permits under a master file or an annual program file and registration of production facilities for export of certain native species. We requested approval of the new information collections, including forms 3-200-74 and 3-200-75, from OMB for a 3–year period. The OMB control number for the new information collections is 1018-0137. The new information collections and the estimated reporting burdens are indicated in the following table.

NEW INFORMATION COLLECTIONS ASSOCIATED WITH THE FINAL RULE

Form Number	Activity	Total Number of Respondents	Total Number of Responses	Estimated Completion Time (Hours)	Total AnnualBurden Hours	$ Value of Burden Hours	Application Processing Fee	Total AnnualNon-Hour $ Cost Burden	Regulation
3-200-74	Single-Use Permits Under a Master File or an Annual Program File	350	1,000	0.1	100	$2,500	$5 *	$30,000	50 CFR 23.51
3-200-75	Registration of a Production Facility for Export of Native CITES Species	25	25	0.5	12.5	$313	$50 *	$1,250	50 CFR 23.36, 23.20, 13.11
Totals		375	1,025		112.5	$2,813		$31,250	

*These fees have been approved (see 70 FR 18311, April 11, 2005).

We have made changes to the requirements for trade in sturgeon caviar (which includes paddlefish caviar). The majority of these requirements are already implemented by other CITES Parties that are either exporting caviar to the United States or receiving imports of caviar from the United States. Therefore, our codification of these existing requirements will not impose a new burden on traders. We require the labeling of containers of caviar being imported into or exported or re-exported from the United States. Resolution Conf. 12.7 (Rev. CoP13) recommends guidelines for a universal labeling system to assist Parties in identifying legal caviar in trade. Sturgeon caviar may be traded internationally only if non-reusable labels containing specific information are affixed to primary and secondary containers. In 2005 and 2006, we issued approximately 200 CITES documents annually to export and re-export caviar from the United States.

CITES Resolution Conf. 12.3 (Rev. CoP13) also requires each live animal in a traveling exhibition (such as a circus) that is pre-Convention or bred in captivity to be covered by a CITES document specific to that specimen. Currently, circuses are allowed to have one document that covers several animals. Under these new regulations, when a document covering multiple specimens qualifying as pre-Convention or bred in captivity specimens expires, the permittee will need to obtain one document for each specimen. As a result, this rule may result in increased permit application processing fees ($100 per application) for a small number of importers and exporters. This requirement will be phased in as current documents expire. We estimate that approximately 40 circuses import and export CITES wildlife to and from the United States on a regular basis. If exhibitors do not obtain individual documents for each specimen, they may encounter difficulties at border crossings. During the comment period on the 2000 proposal, one circus stated that they would not wait for their documents to expire, but would obtain the new documents as soon as possible since the new type of documents should expedite border crossings.

The system for providing multiple single-use CITES documents, in lieu of a single multiple-use document, will result in increased permit fees ($5 per document) for those entities that were utilizing photocopied multiple-use CITES documents. We are eliminating multiple-use documents because many CITES Parties will no longer accept photocopied documents. We estimate 350 exporters will be impacted by this change..

We estimate the public burden for all the information collections associated with this rule, including those already approved under OMB control numbers 1018-0093 and 1018-0130, will vary from 6 minutes to 85 hours per response, with the vast majority requiring 1 hour per response. This estimate includes time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms and reports.

During the proposed rule stage, we solicited comments on the new information collections (FWS Forms 3-200-74 and 3-200-75). While we did not receive any comments specifically for the new collection requirements, we did receive several comments pertaining to other information collection requirements in the rule (recordkeeping, reporting, fees, etc.), which we summarize and discuss in this preamble. We did not make any changes to our burden estimates as a result of these comments.

At any time, interested members of the public and affected agencies may comment on the information collection requirements contained in this rule. Please send such 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).

We particularly invite your comments on: (1) whether or not the collection of information is necessary for the proper performance of the functions of the Service, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden for this 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 applicants..

National Environmental Policy Act (NEPA): The FWS has determined that this final rule is categorically excluded from further NEPA review as provided by 516 DM 2, Appendix 1.9, of the Department of the Interior National Environmental Policy Act Revised Implementing Procedures (FR Volume 69, No. 45, March 8, 2004). No further documentation will be made.

Government-to-Government Relationship with Tribes: Under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512

DM 2, we have evaluated possible effects on Federally recognized Indian Tribes and have determined that there are no effects. Individual tribal members must meet the same regulatory requirements as other individuals who trade internationally in CITES species.

Energy Supply, Distribution, or Use: On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule revises the current regulations in 50 CFR part 23 that implement CITES. The regulations provide procedures to assist individuals and businesses that import, export, and re-export CITES wildlife and plants, and their parts, products, and derivatives, to meet international requirements. Although this final rule is considered a significant regulatory action under Executive Order 12866, it will not 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.

List of Subjects

50 CFR Part 10

Exports, Fish, Imports, Law enforcement, Plants, Transportation, Wildlife.

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 23

Animals, Endangered and threatened species, Exports, Fish, Foreign officials, Foreign trade, Forest and forest products, Imports, Incorporation by reference, Marine mammals, Plants, Reporting and recordkeeping requirements, Transportation, Treaties, Wildlife.

Regulation Promulgation

■ For the reasons given in the preamble, we amend title 50, chapter I, subchapter B of the CFR as follows:

PART 10 – [AMENDED]

■ 1. The authority citation for part 10 continues to read as follows:

Authority: 18 U.S.C. 42; 16 U.S.C. 703-712; 16 U.S.C. 668a-d; 19 U.S.C. 1202; 16 U.S.C. 1531-1543; 16 U.S.C. 1361-1384, 1401-1407; 16 U.S.C. 742a-742j-l; 16 U.S.C. 3371-3378.

■ 2. In § 10.12, the definition of *United States* is revised to read as follows:

§ 10.12 Definitions.

* * * * *

United States means the several States of the United States of America, District of Columbia, Commonwealth of Puerto Rico, American Samoa, U.S. Virgin Islands, Guam, Commonwealth of the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Palmyra Atoll, and Wake Atoll, and any other territory or possession under the jurisdiction of the United States.

* * * * *

PART 13 – [AMENDED]

■ 3. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j-l, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374; 4901-4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

■ 4. Section 13.1 is revised to read as follows:

§ 13.1 General.

(a) A person must obtain a valid permit before commencing an activity for which a permit is required by this subchapter, except as provided in § 23.53 of this subchapter for retrospective permits for certain CITES shipments under very specific situations.

(b) A person must apply for such a permit under the general permit procedures of this part and any other regulations in this subchapter that apply to the proposed activity.

(1) The requirements of all applicable parts of this subchapter must be met.

(2) A person may submit one application that includes the information required in each part of this subchapter, and a single permit will be issued if appropriate.

■ 5. Section 13.11(d) is amended, as set forth below, by:

a. Removing the first two sentences in paragraph (d)(1) and adding in their place the three new sentences set forth below; and

b. Adding to the table in paragraph (d)(4) the following four entries in the section ''Endangered Species Act/CITES/Lacey Act'' immediately before the last four entries in that section so that all entries that begin with the word ''CITES'' are listed together:

§ 13.11 Application procedures.

* * * * *

(d) *Fees.* (1) Unless otherwise exempted under this paragraph (d), you must pay the required permit processing fee at the time that you apply for issuance or amendment of a permit. You must pay in U.S. dollars. If you submit a check or money order, it must be made payable to the ''U.S. Fish and Wildlife Service.'' * * *

* * * * *

(4) *User fees.* * * *

Type of permit	CFR Citation	Fee	Amendment fee
* * * *	* *	*	
Endangered Species Act/CITES/Lacey Act			
* * * *	* *	*	
CITES Introduction from the Sea	50 CFR 23	100	50
CITES Participation in the Plant Rescue Center Program	50 CFR 23	(1)	(1)
CITES Registration of Commercial Breeding Operations for Appendix-I wildlife	50 CFR 23	100	
CITES Request for Approval of an Export Program for a State or Tribe (American Ginseng, Certain Furbearers, and American Alligator)	50 CFR 23	(1)	(1)
* * * *	* *	*	

* * * * *

■ 6. Section 13.12(a)(1) is revised to read as follows:

§ 13.12 General information requirements on applications for permits.

(a) * * *

(1) Applicant's full name and address (street address, city, county, state, and zip code; and mailing address if different from street address); home and work telephone numbers; and, if available, a fax number and e-mail address, and:

(i) If the applicant resides or is located outside the United States, an address in the United States, and, if conducting commercial activities, the name and address of his or her agent that is located in the United States; and

(ii) If the applicant is an individual, the date of birth, social security number, if available, occupation, and any business, agency, organizational, or institutional affiliation associated with the wildlife or plants to be covered by the license or permit; or

(iii) If the applicant is a business, corporation, public agency, or institution, the tax identification number; description of the type of business, corporation, agency, or institution; and the name and title of the person responsible for the permit (such as president, principal officer, or director);

* * * * *

■ 7. Section 13.22(c) is revised to read as follows:

§ 13.22 Renewal of permits.

* * * * *

(c) *Continuation of permitted activity.* Any person holding a valid, renewable permit may continue the activities authorized by the expired permit until the Service acts on the application for renewal if all of the following conditions are met:

(1) The permit is currently in force and not suspended or revoked;

(2) The person has complied with this section; and

(3) The permit is not a CITES document that was issued under part 23 of this subchapter (because the CITES document is void upon expiration).

* * * * *

■ 8. Section 13.46 is amended by adding a sentence at the end of the section to read as follows:

§ 13.46 Maintenance of records.

* * * Permittees who reside or are located in the United States and permittees conducting commercial activities in the United States who reside or are located outside the United States must maintain records at a location in the United States where the records are available for inspection.

PART 17 – [AMENDED]

■ 9. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

§ 17.8 [Redesignated as § 17.9]

■ 10. Part 17 is amended by redesignating § 17.8 as § 17.9.

■ 11. New § 17.8 is added to read as follows:

§ 17.8 Import exemption for threatened, CITES Appendix-II wildlife.

(a) Except as provided in a special rule in §§ 17.40 through 17.48 or in paragraph (b) of this section, all provisions of §§ 17.31 and 17.32 apply to any specimen of a threatened species of wildlife that is listed in Appendix II of the Convention.

(b) *Import.* Except as provided in a special rule in §§ 17.40 through 17.48, any live or dead specimen of a fish and wildlife species listed as threatened under this part may be imported without a threatened species permit under § 17.32 provided all of the following conditions are met:

(1) The specimen was not acquired in foreign commerce or imported in the course of a commercial activity;

(2) The species is listed in Appendix II of the Convention.

(3) The specimen is imported and subsequently used in accordance with the requirements of part 23 of this subchapter, except as provided in paragraph (b)(4) of this section.

(4) Personal and household effects (see § 23.5) must be accompanied by a CITES document.

(5) At the time of import, the importer must provide to the FWS documentation that shows the specimen was not acquired in foreign commerce in the course of a commercial activity.

(6) All applicable requirements of part 14 of this subchapter are satisfied.

■ 12. Section 17.42 is amended as set forth below by:

a. Republishing the heading for paragraph (a);

b. Revising paragraphs (a)(1), (a)(2)(ii)(A), and (a)(2)(ii)(B) to read as set forth below;

c. Removing (a)(2)(ii)(C), (a)(2)(iii), and (a)(2)(iv);

d. Adding paragraphs (a)(3) and (a)(4) to read as set forth below;

e. Revising paragraph (c) to read as set forth below; and

f. Removing and reserving paragraph (g).

§ 17.42 Special rules—reptiles.

(a) American alligator (*Alligator mississippiensis*)—(1) *Definitions.* For purposes of this paragraph (a) the following definitions apply:

(i) *American alligator* means any specimen of the species *Alligator mississippiensis*, whether alive or dead, including any skin, part, product, egg, or offspring thereof held in captivity or from the wild.

(ii) The definitions of *crocodilian skins* and *crocodilian parts* in § 23.70(b) of this subchapter apply to this paragraph (a).

(2) * * *

(ii) * * *

(A) Any skin of an American alligator may be sold or otherwise transferred only if the State or Tribe of taking requires skins to be tagged by State or tribal officials or under State or tribal supervision with a Service-approved tag in accordance with the requirements in part 23 of this subchapter; and

(B) Any American alligator specimen may be sold or otherwise transferred only in accordance with the laws and regulations of the State or Tribe in which the taking occurs and the State or Tribe in which the sale or transfer occurs.

(3) *Import and export.* Any person may import or export an American alligator specimen provided that it is in accordance with part 23 of this subchapter.

(4) *Recordkeeping.*

(i) Any person not holding an import/export license issued by the Service under part 14 of this subchapter and who imports, exports, or obtains permits under part 23 of this subchapter for the import or export of American alligator shall keep such records as are otherwise required to be maintained by all import/export licensees under part 14 of this subchapter. Such records shall be maintained as in the normal course of business, reproducible in the English language, and retained for 5 years from the date of each transaction.

(ii) Subject to applicable limitations of law, duly authorized officers at all reasonable times shall, upon notice, be afforded access to examine such records required to be kept under paragraph (a)(4)(i) of this section, and an opportunity to copy such records.

* * * * *

(c) *Threatened crocodilians*—(1) *What are the definitions of terms used in this paragraph (c)?*

(i) *Threatened crocodilian* means any live or dead specimen of the following species: yacare caiman (*Caiman yacare*), common caiman (*Caiman crocodilus crocodilus*), brown caiman (*Caiman*

crocodilus fuscus, including *Caiman crocodilus chiapasius*), saltwater crocodile (*Crocodylus porosus*) originating in Australia (also referred to as Australian saltwater crocodile), and Nile crocodile (*Crocodylus niloticus*).

(ii) The definitions of *crocodilian skins* and *crocodilian parts* in § 23.70(b) and *re-export* in § 23.5 of this subchapter apply to this paragraph (c).

(2) *What activities involving threatened crocodilians are prohibited by this rule?*

(i) All provisions of §§ 17.31 and 17.32 apply to live specimens, including viable eggs, of all threatened crocodilians and to any specimen of the Appendix-I Nile crocodile.

(ii) Except as provided in paragraph (c)(2)(i) of this section, the following prohibitions apply to threatened crocodilians.

(A) *Import, export, and re-export.* Except as provided in paragraph (c)(3) of this section, it is unlawful to import, export, or re-export, or attempt to import, export, or re-export without valid permits as required under parts 17 and 23 of this subchapter any threatened crocodilians, including their skins, parts, and products.

(B) *Commercial activity.* Except as provided in paragraph (c)(3) of this section, it is unlawful, in the course of a commercial activity, to sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce any threatened crocodilians, including their skins, parts, and products.

(C) It is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, solicit to commit, or cause to be committed any acts described in paragraphs (c)(2)(i) and (c)(2)(ii)(A) and (B) of this section.

(3) *What activities involving threatened crocodilians are allowed by this rule?* Except as provided in (c)(2)(i), you may import, export, or re-export, or sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity, threatened crocodilian skins, parts, and products without a threatened species permit otherwise required under §17.32 provided the requirements of parts 13, 14, and 23 of this subchapter and the requirements of paragraphs (c)(3) and (4) of this section have been met.

(i) *Skins and parts.* Except as provided in (c)(3)(ii) of this section, the import, export, or re-export of threatened crocodilian skins and crocodilian parts is allowed provided the following conditions are met:

(A) Each crocodilian skin and crocodilian part imported, exported, or re-exported must be tagged or labeled in accordance with § 23.70 of this subchapter.

(B) Any countries re-exporting crocodilian skins or parts must have implemented an administrative system for the effective matching of imports and re-exports.

(C) If a shipment contains more than 25 percent replacement tags, the U.S. Management Authority will consult with the Management Authority of the re-exporting country before clearing the shipment. Such shipments may be seized if we determine that the requirements of the Convention have not been met.

(D) The country of origin and any intermediary country(s) must be effectively implementing the Convention. If we receive persuasive information from the CITES Secretariat or other reliable sources that a specific country is not effectively implementing the Convention, we will prohibit or restrict imports from such country(s) as appropriate for the conservation of the species.

(ii) *Meat, skulls, scientific specimens, products, and noncommercial personal or household effects.* The tagging requirements in paragraph (c)(3)(i) of this section for skins and parts do not apply to the import, export, or re-export of threatened crocodilian meat, skulls, scientific specimens, or products or to the noncommercial import, export, or re-export of personal effects in accompanying baggage or household effects.

(4) *When and how will the Service inform the public of additional restrictions in trade of threatened crocodilians?* Except in rare cases involving extenuating circumstances that do not adversely affect the conservation of the species, the Service will issue an information bulletin (posted on our websites, *http://www.fws.gov/le* and *http://www.fws.gov/international*) announcing additional restrictions on trade of specimens of threatened crocodilians if any ofthe following criteria are met:

(i) The country is listed in a Notification to the Parties by the CITES Secretariat as not having designated Management and Scientific Authorities.

(ii) The country is identified in any action adopted by the Conference of the Parties to the Convention, the Standing Committee, or in a Notification issued by the CITES Secretariat, whereby Parties are asked not to accept shipments of specimens of any CITES species from the country in question or of any crocodilian species listed in the CITES Appendices.

(iii) We determine, based on information from the CITES Secretariat or other reliable sources, that the country is not effectively implementing the provisions of the Convention.

(5) *Reporting requirements for yacare caiman range countries.*

(i) *Biennial reports.* Range countries (Argentina, Bolivia, Brazil, and Paraguay) wishing to export specimens of yacare caiman to the United States for commercial purposes must provide a biennial report containing the most recent information available on the status of the species. The first submission of a status report will be required as of December 31, 2001, and every 2 years thereafter on the anniversary of that date. For each range country, all of the following information must be included in the report.

(A) Recent distribution and population data, and a description of the methodology used to obtain such estimates.

(B) Description of research projects currently being conducted related to the biology of the species in the wild, particularly reproductive biology (for example, age or size when animals become sexually mature, number of clutches per season, number of eggs per clutch, survival of eggs, survival of hatchlings).

(C) Description of laws and programs regulating harvest, including approximate acreage of land set aside as natural reserves or national parks that provide protected habitat for yacare caiman.

(D) Description of current sustainable harvest programs, including ranching (captive rearing of specimens collected from the wild as eggs or juveniles) and farming (captive-breeding) programs.

(E) Current harvest quotas for wild populations.

(F) Export data for the last 2 years. Information should be organized according to the source of specimens such as wild-caught, captive-reared, or captive-bred.

(ii) *Review and restrictions.* The U.S. Scientific Authority will conduct a review every 2 years, using information in the biennial reports and other available information, to determine whether range country management programs are effectively achieving conservation benefits for the yacare caiman. Based on the best available information, we may restrict trade from a range country if we determine that the conservation or management status of threatened yacare caiman populations has changed, such that continued recovery of the population in that country may be compromised. Trade restrictions, as addressed in paragraph

(c)(4) of this section, may be implemented based on one or more of the following factors:

(A) Failure to submit the reports described above, or failure to respond to requests for additional information.

(B) A change in range country laws or regulations that lessens protection for yacare caiman.

(C) A change in range country management programs that lessens protection for the species.

(D) A documented decline in wild population numbers.

(E) A documented increase in poaching.

(F) A documented decline in habitat quality or quantity.

(G) Other natural or manmade factors affecting the species' recovery.

* * * * *

■ 13. Part 23 is revised to read as follows:

PART 23—CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)

Subpart A—Introduction

Sec.
23.1 What are the purposes of these regulations and CITES?
23.2 How do I decide if these regulations apply to my shipment or me?
23.3 What other wildlife and plant regulations may apply?
23.4 What are Appendices I, II, and III?
23.5 How are the terms used in these regulations defined?
23.6 What are the roles of the Management and Scientific Authorities?
23.7 What office do I contact for CITES information?
23.8 What are the information collection requirements?

Subpart B—Prohibitions, Exemptions, and Requirements

23.13 What is prohibited?
23.14 [Reserved]
23.15 How may I travel internationally with my personal or household effects, including tourist souvenirs?
23.16 What are the U.S. CITES requirements for urine, feces, and synthetically derived DNA?
23.17 What are the requirements for CITES specimens traded internationally by diplomatic, consular, military, and other persons exempt from customs duties or inspections?
23.18 What CITES documents are required to export Appendix-I wildlife?
23.19 What CITES documents are required to export Appendix-I plants?
23.20 What CITES documents are required for international trade?
23.21 What happens if a country enters a reservation for a species?
23.22 What are the requirements for in-transit shipments?
23.23 What information is required on U.S. and foreign CITES documents?
23.24 What code is used to show the source of the specimen?
23.25 What additional information is required on a non-Party CITES document?
23.26 When is a U.S. or foreign CITES document valid?
23.27 What CITES documents do I present at the port?

Subpart C—Application Procedures, Criteria, and Conditions

23.32 How do I apply for a U.S. CITES document?
23.33 How is the decision made to issue or deny a request for a U.S. CITES document?
23.34 What kinds of records may I use to show the origin of a specimen when I apply for a U.S. CITES document?
23.35 What are the requirements for an import permit?
23.36 What are the requirements for an export permit?
23.37 What are the requirements for a re-export certificate?
23.38 What are the requirements for a certificate of origin?
23.39 What are the requirements for an introduction-from-the-sea certificate?
23.40 What are the requirements for a certificate for artificially propagated plants?
23.41 What are the requirements for a bred-in-captivity certificate?
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Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora (March 3, 1973), 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Subpart A—Introduction

§ 23.1 What are the purposes of these regulations and CITES?

(a) *Treaty*. The regulations in this part implement the Convention on

International Trade in Endangered Species of Wild Fauna and Flora, also known as CITES, the Convention, the Treaty, or the Washington Convention, TIAS (Treaties and Other International Acts Series) 8249.

(b) *Purpose*. The aim of CITES is to regulate international trade in wildlife and plants, including parts, products, and derivatives, to ensure it is legal and does not threaten the survival of species in the wild. Parties, recognize that:

(1) Wildlife and plants are an irreplaceable part of the natural systems of the earth and must be protected for this and future generations.

(2) The value of wildlife and plants is ever-growing from the viewpoints of aesthetics, science, culture, recreation, and economics.

(3) Although countries should be the best protectors of their own wildlife and plants, international cooperation is essential to protect wildlife and plant species from over-exploitation through international trade.

(4) It is urgent that countries take appropriate measures to prevent illegal trade and ensure that any use of wildlife and plants is sustainable.

(c) *National legislation*. We, the U.S. Fish and Wildlife Service (FWS), implement CITES through the Endangered Species Act (ESA).

§ 23.2 How do I decide if these regulations apply to my shipment or me?

Answer the following questions to decide if the regulations in this part apply to your proposed activity:

Question on proposed activity	Answer and action
(a) Is the wildlife or plant species (including parts, products, derivatives, whether wild-collected, or born or propagated in a controlled environment) listed in Appendix I, II, or III of CITES (see § 23.91)?	(1) **YES**. Continue to paragraph (b) of this section. (2) **NO**. The regulations in this part do not apply.
(b) Is the wildlife or plant specimen exempted from CITES (see § 23.92)?	(1) **YES**. The regulations in this part do not apply. (2) **NO**. Continue to paragraph (c) of this section.
(c) Do you want to import, export, re-export, engage in international trade, or introduce from the sea?	(1) **YES**. The regulations in this part apply. (2) **NO**. Continue to paragraph (d) of this section.
(d) Was the specimen that you possess or want to enter into intrastate or interstate commerce unlawfully acquired, illegally traded, or otherwise subject to conditions set out on a CITES document that authorized import?	(1) **YES**. The regulations in this part apply. See § 23.13(c) and (d) and sections 9(c)(1) and 11(a) and (b) of the ESA (16 U.S.C. 1538(c)(1) and 1540(a) and (b)). (2) **NO**. The regulations in this part do not apply.

§ 23.3 What other wildlife and plant regulations may apply?

(a) You may need to comply with other regulations in this subchapter that require a permit or have additional restrictions. Many CITES species are also covered by one or more parts of this subchapter or title and have additional requirements:

(1) Part 15 (exotic birds).

(2) Part 16 (injurious wildlife).

(3) Parts 17 of this subchapter and 222, 223, and 224 of this title (endangered and threatened species).

(4) Parts 18 of this subchapter and 216 of this title (marine mammals).

(5) Part 20 (migratory bird hunting).

(6) Part 21 (migratory birds).

(7) Part 22 (bald and golden eagles).

(b) If you are applying for a permit, you must comply with the general permit procedures in part 13 of this subchapter. Definitions and a list of birds protected under the Migratory Bird Treaty Act can be found in part 10 of this subchapter.

(c) If you are importing (including introduction from the sea), exporting, or re-exporting wildlife or plants, you must comply with the regulations in part 14 of this subchapter for wildlife or part 24 of this subchapter for plants. Activities with plants are also regulated by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) and Department of Homeland Security, U.S. Customs and Border Protection (CBP), in 7 CFR parts 319, 355, and 356.

(d) You may also need to comply with other Federal, State, tribal, or local requirements.

§ 23.4 What are Appendices I, II, and III?

Species are listed by the Parties in one of three Appendices to the Treaty (see subpart H of this part), each of which provides a different level of protection and is subject to different requirements. Parties regulate trade in specimens of Appendix-I, -II, and -III species and their parts, products, and derivatives through a system of permits and certificates (CITES documents). Such documents enable Parties to monitor the effects of the volume and type of trade to ensure trade is legal and not detrimental to the survival of the species.

(a) *Appendix I* includes species threatened with extinction that are or may be affected by trade. Trade in Appendix-I specimens may take place only in exceptional circumstances.

(b) *Appendix II* includes species that are not presently threatened with extinction, but may become so if their trade is not regulated. It also includes species that need to be regulated so that trade in certain other Appendix-I or -II species may be effectively controlled; these species are most commonly listed due to their similarity of appearance to other related CITES species.

(c) *Appendix III* includes species listed unilaterally by a range country to obtain international cooperation in controlling trade.

§ 23.5 How are the terms used in these regulations defined?

In addition to the definitions contained in part 10 of this subchapter, and unless the context otherwise requires, in this part:

Affected by trade means that either a species is known to be in trade and the trade has or may have a detrimental impact on the status of the species, or a species is suspected to be in trade or there is demonstrable potential international demand for the species that may be detrimental to the survival of the species in the wild.

Annotation means an official footnote to the listing of a species in the CITES Appendices. A reference annotation provides information that further explains the listing (such as ''p.e.'' for possibly extinct). A substantive annotation is an integral part of a species listing. It designates whether the listing includes or excludes a geographically separate population, subspecies, species, group of species, or higher taxon, and the types of specimens included in or excluded from the listing, such as certain parts, products, or derivatives. A substantive annotation may designate export quotas adopted by the CoP. For species

transferred from Appendix I to II subject to an annotation relating to specified types of specimens, other types of specimens that are not specifically included in the annotation are treated as if they are Appendix-I specimens.

Appropriate and acceptable destination, when used in an Appendix-II listing annotation for the export of, or international trade in, live animals, means that the Management Authority of the importing country has certified, based on advice from the Scientific Authority of that country, that the proposed recipient is suitably equipped to house and care for the animal (see criteria in § 23.65). Such certification must be provided before a CITES document is issued by the Management Authority of the exporting or re-exporting country.

Artificially propagated means a cultivated plant that meets the criteria in § 23.64.

ATA carnet means a type of international customs document (see § 23.50). ATA is a combination of the French and English words ''Admission Temporaire/Temporary Admission.''

Bred for commercial purposes means any specimen of an Appendix-I wildlife species bred in captivity for commercial purposes. Any Appendix-I specimen that does not meet the definition of ''bred for noncommercial purposes'' is considered to be bred for commercial purposes.

Bred for noncommercial purposes means any specimen of an Appendix-I wildlife species bred in captivity for noncommercial purposes, where each donation, exchange, or loan of the specimen is noncommercial and is conducted between facilities that are involved in a cooperative conservation program.

Bred in captivity means wildlife that is captive-bred and meets the criteria in § 23.63.

Captive-bred means wildlife that is the offspring (first (F1) or subsequent generations) of parents that either mated or otherwise transferred egg and sperm under controlled conditions if reproduction is sexual, or of a parent that was maintained under controlled conditions when development of the offspring began if reproduction is asexual, but does not meet the bred-in-captivity criteria (see § 23.63).

*Certificat*e means a CITES document or CITES exemption document that identifies on its face the type of certificate it is, including re-export certificate, introduction-from-the-sea certificate, and certificate of origin.

CITES document or CITES exemption document means any certificate, permit, or other document issued by a Management Authority of a Party or a competent authority of a non-Party whose name and address is on file with the Secretariat to authorize the international movement of CITES specimens.

Commercial means related to an activity, including actual or intended import, export, re-export, sale, offer for sale, purchase, transfer, donation, exchange, or provision of a service, that is reasonably likely to result in economic use, gain, or benefit, including, but not limited to, profit (whether in cash or in kind).

Cooperative conservation program means a program in which participating captive- breeding facilities produce Appendix-I specimens bred for noncommercial purposes and participate in or support a recovery activity for that species in cooperation with one or more of the species' range countries.

Coral (dead) means pieces of coral in which the skeletons of the individual polyps are still intact, but which contain no living coral tissue.

Coral fragments, including coral gravel and coral rubble, means loose pieces of broken finger-like coral between 2 and 30 mm in diameter that contain no living coral tissue (see § 23.92 for exemptions).

Coral (live) means pieces of coral that are alive.

Coral rock means hard consolidated material greater than 30 mm in diameter that consists of pieces of coral and possibly also cemented sand, coralline algae, or other sedimentary rocks that contain no living coral tissue. Coral rock includes *live rock* and *substrate*, which are terms for pieces of coral rock to which are attached live specimens of other invertebrate species or coralline algae that are not listed in the CITES Appendices.

Coral sand means material that consists entirely, or in part, of finely crushed coral no larger than 2 mm in diameter and that contains no living coral tissue (see § 23.92 for exemptions).

Country of origin means the country where the wildlife or plant was taken from the wild or was born or propagated in a controlled environment, except in the case of a plant specimen that qualified for an exemption under the provisions of CITES, the country of origin is the country in which the specimen ceased to qualify for the exemption.

Cultivar means a horticulturally derived plant variety that has been selected for specific morphological, physiological, or other characteristics, such as color, a large flower, or disease resistance.

Cultivated means a plant grown or tended by humans for human use. A cultivated plant can be treated as artificially propagated under CITES only if it meets the criteria in § 23.64.

Export means to send, ship, or carry a specimen out of a country (for export from the United States, see part 14 of this subchapter).

Flasked means plant material obtained *in vitro*, in solid or liquid media, transported in sterile containers.

Household effect means a dead wildlife or plant specimen that is part of a household move and meets the criteria in § 23.15.

Hybrid means any wildlife or plant that results from a cross of genetic material between two separate taxa when one or both are listed in Appendix I, II, or III. See § 23.42 for plant hybrids and § 23.43 for wildlife hybrids.

Import means to bring, ship, or carry a specimen into a country (for import into the United States, see part 14 of this subchapter).

International trade means the import, introduction from the sea, export, or re-export across jurisdictional or international boundaries for any purpose whether commercial or noncommercial.

In-transit shipment means the transshipment of any wildlife or plant through an intermediary country when the specimen remains under customs control and either the shipment meets the requirements of § 23.22 or the sample collection covered by an ATA carnet meets the requirements of § 23.50.

Introduction from the sea means transportation into a country of specimens of any species that were taken in the marine environment not under the jurisdiction of any country.

ISO country code means the two-letter country code developed by the International Organization for Standardization (ISO) to represent the name of a country and its subdivisions.

Live rock see the definition for *coral rock*.

Management Authority means a governmental agency officially designated by, and under the supervision of, either a Party to implement CITES, or a non-Party to serve in the role of a Management Authority, including the issuance of CITES documents on behalf of that country.

Noncommercial means related to an activity that is not commercial. Noncommercial includes, but is not limited to, personal use.

Non-Party means a country that has not deposited an instrument of ratification, acceptance, approval, or

accession to CITES with the Depositary Government (Switzerland), or a country that was a Party but subsequently notified the Depositary Government of its denunciation of CITES and the denunciation is in effect.

Offspring of first generation (F1) means a wildlife specimen produced in a controlled environment from parents at least one of which was conceived in or taken from the wild.

Offspring of second generation (F2) or subsequent generations means a wildlife specimen produced in a controlled environment from parents that were also produced in a controlled environment.

Parental stock means the original breeding or propagating specimens that produced the subsequent generations of captive or cultivated specimens.

Party means a country that has given its consent to be bound by the provisions of CITES by depositing an instrument of ratification, acceptance, approval, or accession with the Depositary Government (Switzerland), and for which such consent is in effect.

Permit means a CITES document that identifies on its face import permit or export permit.

Personal effect means a dead wildlife or plant specimen, including a tourist souvenir, that is worn as clothing or accessories or is contained in accompanying baggage and meets the criteria in § 23.15.

Personal use means use that is not commercial and is for an individual's own consumption or enjoyment.

Precautionary measures means the actions taken that will be in the best interest of the conservation of the species when there is uncertainty about the status of a species or the impact of trade on the conservation of a species.

Pre-Convention means a specimen that was acquired (removed from the wild or born or propagated in a controlled environment) before the date the provisions of the Convention first applied to the species and that meets the criteria in § 23.45, and any product (including a manufactured item) or derivative made from such specimen.

Primarily commercial purposes means an activity whose noncommercial aspects do not clearly predominate (see § 23.62).

Propagule means a structure, such as a cutting, seed, or spore, which is capable of propagating a plant.

Readily recognizable means any specimen that appears from a visual, physical, scientific, or forensic examination or test; an accompanying document, packaging, mark, or label; or any other circumstances to be a part, product, or derivative of any CITES wildlife or plant, unless such part, product, or derivative is specifically exempt from the provisions of CITES or this part.

Re-export means to send, ship, or carry out of a country any specimen previously imported into that country, whether or not the specimen has been altered since import.

Reservation means the action taken by a Party to inform the Secretariat that it is not bound by the effect of a specific listing (see § 23.21).

Scientific Authority means a governmental or independent scientific institution or entity officially designated by either a Party to implement CITES, or a non-Party to serve the role of a Scientific Authority, including making scientific findings.

Secretariat means the entity designated by the Treaty to perform certain administrative functions (see § 23.84).

Shipment means any CITES specimen in international trade whether for commercial or noncommercial use, including any personal item.

Species means any species, subspecies, hybrid, variety, cultivar, color or morphological variant, or geographically separate population of that species.

Specimen means any wildlife or plant, whether live or dead. This term includes any readily recognizable part, product, or derivative unless otherwise annotated in the Appendices.

Sustainable use means the use of a species in a manner and at a level that maintains wild populations at biologically viable levels for the long term. Such use involves a determination of the productive capacity of the species and its ecosystem to ensure that utilization does not exceed those capacities or the ability of the population to reproduce, maintain itself, and perform its role or function in its ecosystem.

Trade means the same as international trade.

Transit see the definition for *in-transit shipment*.

Traveling exhibition means a display of live or dead wildlife or plants for entertainment, educational, cultural, or other display purposes that is temporarily moving internationally.

§ 23.6 What are the roles of the Management and Scientific Authorities?

Under Article IX of the Treaty, each Party must designate a Management and Scientific Authority to implement CITES for that country. If a non-Party wants to trade with a Party, it must also designate such Authorities. The names and addresses of these offices must be sent to the Secretariat to be included in the Directory. In the United States, different offices within the FWS have been designated the Scientific Authority and Management Authority, which for purposes of this section includes FWS Law Enforcement. When offices share activities, the Management Authority is responsible for dealing primarily with management and regulatory issues and the Scientific Authority is responsible for dealing primarily with scientific issues. The offices do the following:

Roles	U.S. Scientific Authority	U.S. Management Authority
(a) Provide scientific advice and recommendations, including advice on biological findings for applications for certain CITES documents, registrations, and export program approvals. Evaluate the conservation status of species to determine if a species listing or change in a listing is warranted. Interpret listings and review nomenclatural issues.	x	
(b) Review applications for CITES documents and issue or deny them based on findings required by CITES.		x
(c) Communicate with the Secretariat and other countries on scientific, administrative, and enforcement issues.	x	x
(d) Ensure that export of Appendix-II specimens is at a level that maintains a species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which it might become eligible for inclusion in Appendix I.	x	
(e) Monitor trade in all CITES species and produce annual reports on CITES trade.		x

Roles	U.S. Scientific Authority	U.S. Management Authority
(f) Collect the cancelled foreign export permit or re-export certificate and any corresponding import permit presented for import of any CITES specimen. Collect a copy of the validated U.S. export permit or re-export certificate presented for export or re-export of any CITES specimen.		x
(g) Produce biennial reports on legislative, regulatory, and administrative measures taken by the United States to enforce the provisions of CITES.		x
(h) Coordinate with State and tribal governments and other Federal agencies on CITES issues, such as the status of native species, development of policies, negotiating positions, and law enforcement activities.	x	x
(i) Communicate with the scientific community, the public, and media about CITES issues. Conduct public meetings and publish notices to gather input from the public on the administration of CITES and the conservation and trade status of domestic and foreign species traded internationally.	x	x
(j) Represent the United States at the meetings of the CoP, on committees (see subpart G of this part), and on CITES working groups. Consult with other countries on CITES issues and the conservation status of species. Prepare discussion papers and proposals for new or amended resolutions and species listings for consideration at the CoP.	x	x
(k) Provide assistance to APHIS and CBP for the enforcement of CITES. Cooperate with enforcement officials to facilitate the exchange of information between enforcement bodies and for training purposes.	x	x
(l) Provide financial and technical assistance to other governmental agencies and CITES officials of other countries.	x	x

§ 23.7 What office do I contact for CITES information?

Contact the following offices to receive information about CITES:

Type of information	Office to contact
(a) *CITES administrative and management issues*: (1) CITES documents, including application forms and procedures; lists of registered scientific institutions and operations breeding Appendix-I wildlife for commercial purposes; and reservations (2) Information on the CoP (3) List of CITES species (4) Names and addresses of other countries' Management and Scientific Authority offices (5) Notifications, resolutions, and decisions (6) Standing Committee documents and issues (7) State and tribal export programs	U.S. Management Authority U.S. Fish and Wildlife Service 4401 North Fairfax Drive, Room 700 Arlington, Virginia 22203 Toll Free: (800) 358-2104/permit questions Tel: (703) 358-2095/other questions Fax: (703) 358-2281/permits Fax: (703) 358-2298/other issues E-mail: *managementauthority@fws.gov* Website: *http://www.fws.gov/international* and *http://www.fws.gov/permits*
(b) *Scientific issues:* (1) Animals and Plants Committees documents and issues (2) Findings of non-detriment and suitability of facilities, and other scientific findings (3) Listing of species in the Appendices and relevant resolutions (4) Names and addresses of other countries' Scientific Authority offices and scientists involved with CITES-related issues (5) Nomenclatural issues	U.S. Scientific Authority U.S. Fish and Wildlife Service 4401 North Fairfax Drive, Room 750 Arlington, Virginia 22203 Tel: (703) 358-1708 Fax: (703) 358-2276 E-mail: *scientificauthority@fws.gov* Website: *http://www.fws.gov/international*
(c) *Wildlife clearance procedures:* (1) CITES replacement tags (2) Information about wildlife port office locations (3) Information bulletins (4) Inspection and clearance of wildlife shipments involving import, introduction from the sea, export, and re-export, and filing a Declaration of Importation or Exportation of Fish or Wildlife (Form 3–177) (5) Validation, certification, or cancellation of CITES wildlife documents	Law Enforcement U.S. Fish and Wildlife Service 4401 North Fairfax Drive, Mail Stop LE–3000 Arlington, Virginia 22203 Tel: (703) 358-1949 Fax: (703) 358-2271 Website: *http://www.fws.gov/le*

Type of information	Office to contact
(d) *APHIS plant clearance procedures:* (1) Information about plant port office locations (2) Inspection and clearance of plant shipments involving: (i) Import and introduction from the sea of living plants (ii) Export and re-export of living and nonliving plants (3) Validation or cancellation of CITES plant documents for the type of shipments listed in paragraph (d)(2) of this section	U.S. Department of Agriculture APHIS/PPQ 4700 River Road Riverdale, Maryland 20737–1236 Toll Free: (877) 770-5990/permit questions Tel: (301) 734-8891/other CITES issues Fax: (301) 734-5786/permit questions Fax: (301) 734-5276/other CITES issues Website: *http://www.aphis.usda.gov/plant_health*
(e) *CBP plant clearance procedures:* (1) Inspection and clearance of plant shipments involving: (i) Import and introduction from the sea of nonliving plants (ii) Import of living plants from Canada at designated border ports (7 CFR 319.37–14(b) and 50 CFR 24.12(d)) (2) Cancellation of CITES plant documents for the type of shipments listed in paragraph (e)(1) of this section	Department of Homeland Security U.S. Customs and Border Protection Office of Field Operations Agriculture Programs and Liaison 1300 Pennsylvania Avenue, NW, Room 2.5 B Washington, DC 20229 Tel: (202) 344-3298 Fax: (202) 344-1442
(f) *General information on CITES:* (1) CITES export quota information (2) CITES'*Guidelines for transport and preparation for shipment of live wild animals and plants* (3) Information about the Secretariat (4) Names and addresses of other countries' Management and Scientific Authority offices (5) Official documents, including resolutions, decisions, notifications, CoP documents, and committee documents (6) Official list of CITES species and species database (7) Text of the Convention	CITES Secretariat Website: *http://www.cites.org*

§ 23.8 What are the information collection requirements?

The Office of Management and Budget approved the information collection requirements for application forms and reports contained in this part and assigned OMB Control Numbers 1018–0093 and 1018–0137. We cannot collect or sponsor a collection of information and you are not required to provide information unless it displays a currently valid OMB control number.

Subpart B—Prohibitions, Exemptions, and Requirements

§ 23.13 What is prohibited?

Except as provided in § 23.92, it is unlawful for any person subject to the jurisdiction of the United States to conduct any of the following activities unless they meet the requirements of this part:

(a) Import, export, re-export, or engage in international trade with any specimen of a species listed in Appendix I, II, or III of CITES.

(b) Introduce from the sea any specimen of a species listed in Appendix I or II of CITES.

(c) Possess any specimen of a species listed in Appendix I, II, or III of CITES imported, exported, re-exported, introduced from the sea, or traded contrary to the provisions of CITES, the ESA, or this part.

(d) Attempt to commit, solicit another to commit, or cause to be committed any of the activities described in paragraphs (a) through (c) of this section.

§ 23.14 [Reserved]

§ 23.15 How may I travel internationally with my personal or household effects, including tourist souvenirs?

(a) *Purpose.* Article VII(3) of the Treaty recognizes a limited exemption for the international movement of personal and household effects.

(b) *Stricter national measures.* The exemption for personal and household effects does not apply if a country prohibits or restricts the import, export, or re-export of the item.

(1) You or your shipment must be accompanied by any document required by a country under its stricter national measures.

(2) In the United States, you must obtain any permission needed under other regulations in this subchapter (see § 23.3).

(c) *Required CITES documents.* You must obtain a CITES document for personal or household effects and meet the requirements of this part if one of the following applies:

(1) The Management Authority of the importing, exporting, or re-exporting country requires a CITES document.

(2) You or your shipment does not meet all of the conditions for an exemption as provided in paragraphs (d) through (f) of this section.

(3) The personal or household effect for the following species exceeds the quantity indicated in paragraphs (c)(3)(i) through (vi) in the table below:

Major group	Species (Appendix II only)	Type of specimen	Quantity[1]
Fishes	(i) Acipenseriformes (sturgeon, including paddlefish)	Sturgeon caviar (see § 23.71)	250 gm
Fishes	(ii) *Hippocampus* spp. (seahorses)	Dead specimens, parts, products (including manufactured items), and derivatives	4

Major group	Species (Appendix II only)	Type of specimen	Quantity[1]
Reptiles	(iii) Crocodylia (alligators, caimans, crocodiles, gavial)	Dead specimens, parts, products (including manufactured items), and derivatives	4
Molluscs	(iv) *Strombus gigas* (queen conch)	Shells	3
Molluscs	(v) Tridacnidae (giant clams)	Shells, each of which may be one intact shell or two matching halves	3 shells, total not exceeding 3 kg
Plants	(vi) Cactaceae (cacti)	Rainsticks	3

[1] To import, export, or re-export more than the quantity listed in the table, you must have a valid CITES document for the entire quantity.

(d) *Personal effects*. You do not need a CITES document to import, export, or re-export any legally acquired specimen of a CITES species to or from the United States if all of the following conditions are met:

(1) No live wildlife or plant (including eggs or non-exempt seeds) is included.

(2) No specimen from an Appendix-I species is included, except for certain worked African elephant ivory as provided in paragraph (f) of this section.

(3) The specimen and quantity of specimens are reasonably necessary or appropriate for the nature of your trip or stay and, if the type of specimen is one listed in paragraph (c)(3) of this section, the quantity does not exceed the quantity given in the table.

(4) You own and possess the specimen for personal use, including any specimen intended as a personal gift.

(5) You are either wearing the specimen as clothing or an accessory or taking it as part of your personal baggage, which is being carried by you or checked as baggage on the same plane, boat, vehicle, or train as you.

(6) The specimen was not mailed or shipped separately.

(e) *Household effects*. You do not need a CITES document to import, export, or re-export any legally acquired specimen of a CITES species that is part of a shipment of your household effects when moving your residence to or from the United States, if all of the following conditions are met:

(1) The provisions of paragraphs (d)(1) through (3) of this section are met.

(2) You own the specimen and are moving it for personal use.

(3) You import or export your household effects within 1 year of changing your residence from one country to another.

(4) The shipment, or shipments if you cannot move all of your household effects at one time, contains only specimens purchased, inherited, or otherwise acquired before you changed your residence.

(f) *African elephant worked ivory*. You may export or re-export from the United States worked African elephant (*Loxodonta africana*) ivory and then re-import it without a CITES document if all of the following conditions are met:

(1) The worked ivory is a personal or household effect that meets the requirements of paragraphs (c) through (e) of this section and you are a U.S. resident who owned the worked ivory before leaving the United States and intend to bring the item back to the United States.

(2) The ivory is pre-Convention (see § 23.45). (The African elephant was first listed in CITES on February 26, 1976.)

(3) You may not sell or transfer the ivory while outside the United States.

(4) The ivory is substantially worked and is not raw. *Raw ivory* means an African elephant tusk, or any piece of tusk, the surface of which, polished or unpolished, is unaltered or minimally carved, including ivory mounted on a stand or part of a trophy.

(5) When you return, you are able to provide records, receipts, or other documents to show that the ivory is pre-Convention and that you owned and registered it before you left the United States. To register such an item you must obtain one of the following documents:

(i) U.S. CITES pre-Convention certificate.

(ii) FWS Declaration of Importation or Exportation of Fish or Wildlife (Form 3–177).

(iii) Customs and Border Protection Certificate of Registration for Personal Effects Taken Abroad (Form 4457).

§ 23.16 What are the U.S. CITES requirements for urine, feces, and synthetically derived DNA?

(a) *CITES documents*. We do not require CITES documents to trade in urine, feces, or synthetically derived DNA.

(1) You must obtain any collection permit and CITES document required by the foreign country.

(2) If the foreign country requires you to have a U.S. CITES document for these kinds of samples, you must apply for a CITES document and meet the requirements of this part.

(b) *Urine and feces*. Except as provided in paragraph (a) of this section, we consider urine and feces to be wildlife byproducts, rather than parts, products, or derivatives, and exempt them from the requirements of CITES and this part.

(c) *DNA*. We differentiate between DNA directly extracted from blood and tissue and DNA synthetically derived as follows:

(1) A DNA sample directly derived from wildlife or plant tissue is regulated by CITES and this part.

(2) A DNA sample synthetically derived that does not contain any part of the original template is exempt from the requirements of CITES and this part.

§ 23.17 What are the requirements for CITES specimens traded internationally by diplomatic, consular, military, and other persons exempt from customs duties or inspections?

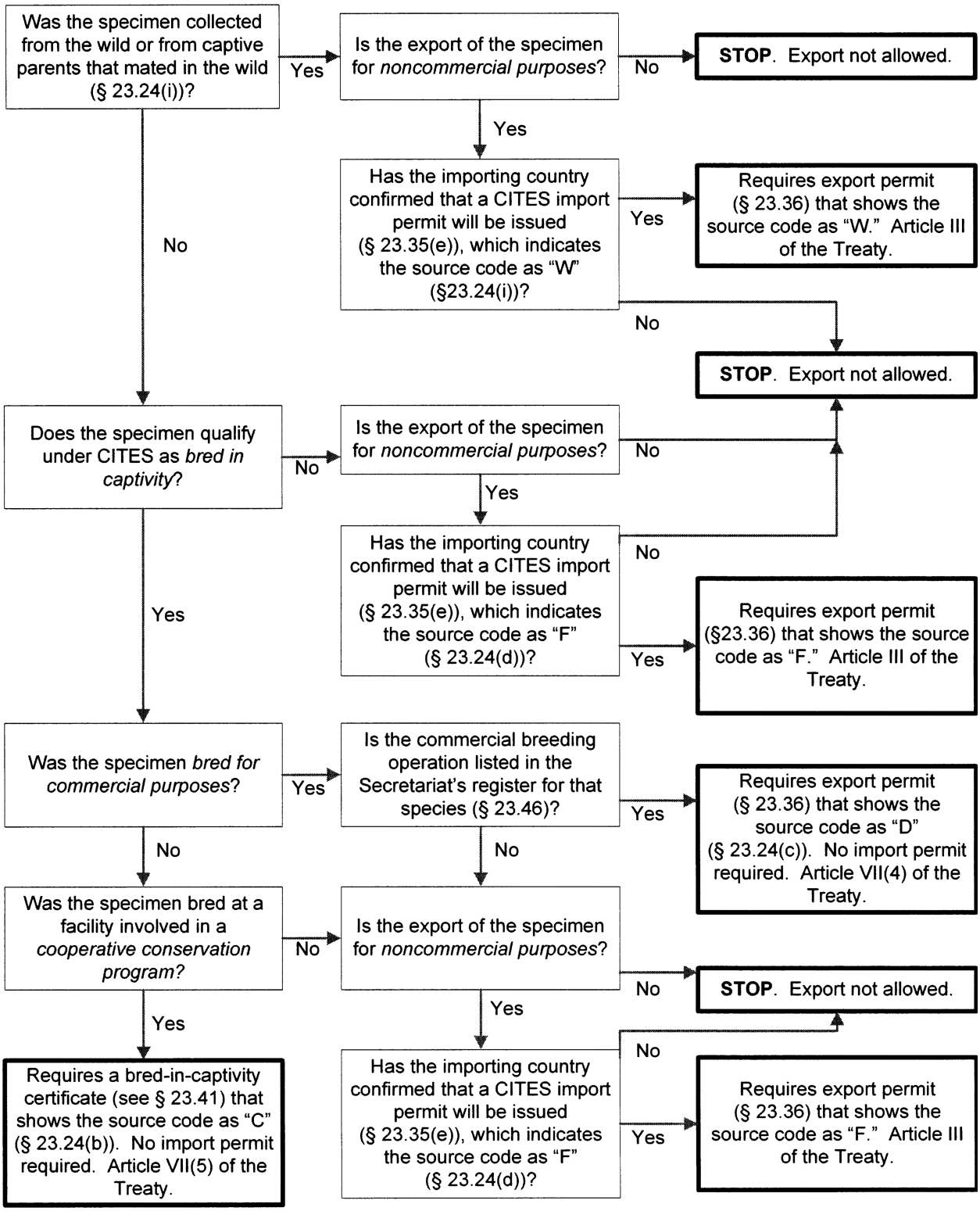
A specimen of a CITES species imported, introduced from the sea, exported, or re-exported by a person receiving duty-free or inspection exemption privileges under customs laws must meet the requirements of CITES and the regulations in this part.

§ 23.18 What CITES documents are required to export Appendix-I wildlife?

Answer the questions in the following decision tree to find the section in this part that applies to the type of CITES document you need to export Appendix-I wildlife. See § 23.20(d) for CITES exemption documents or § 23.92 for specimens that are exempt from the requirements of CITES and do not need CITES documents.

BILLING CODE 4310–55–S

Decision Tree for Export of Appendix-I Wildlife

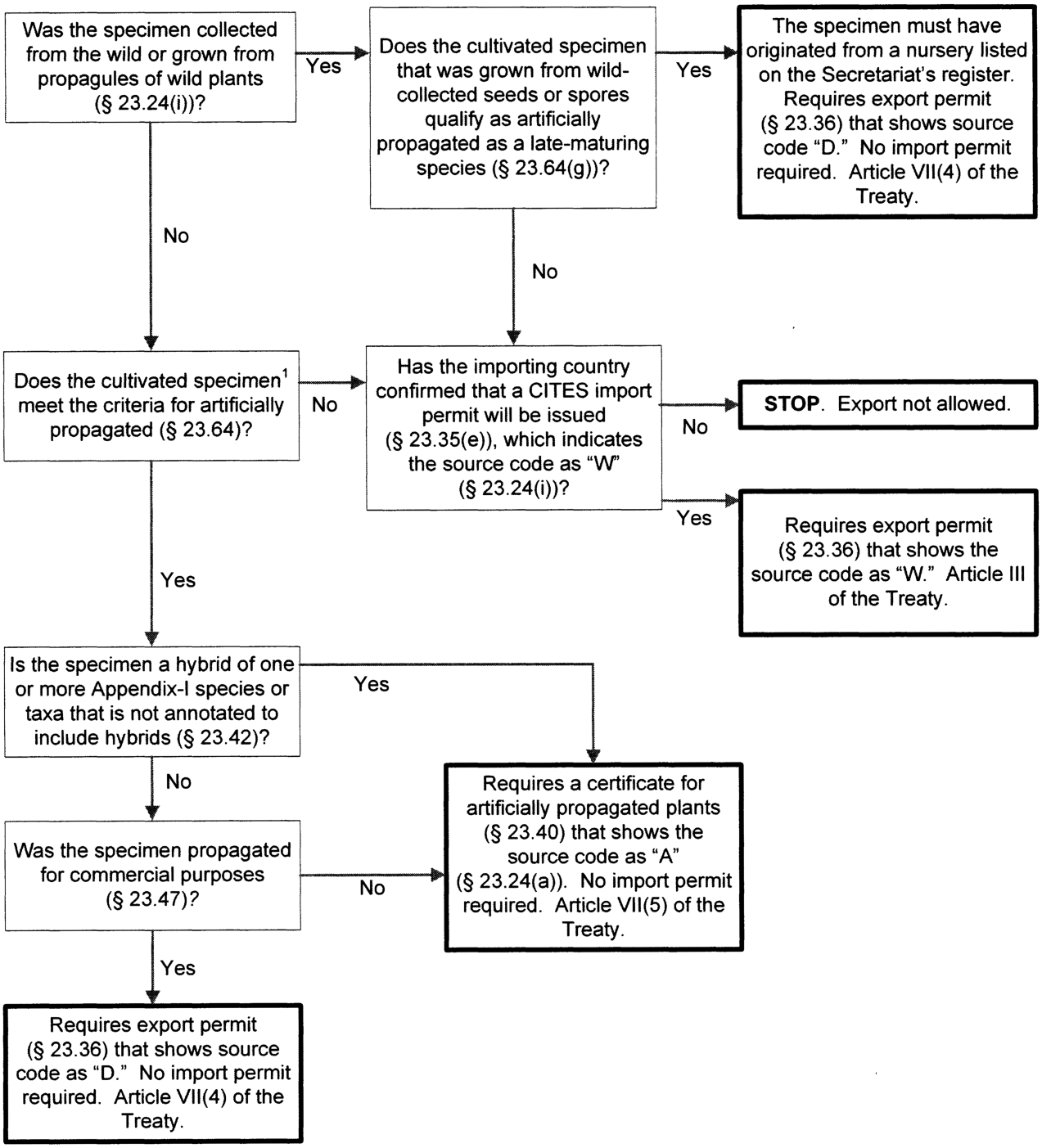


A

§ 23.19 What CITES documents are required to export Appendix-I plants?

Answer the questions in the following decision tree to find the section in this part that applies to the type of CITES document you need to export Appendix-I plants. See § 23.20(d) for CITES exemption documents or § 23.92 for specimens that are exempt from the requirements of CITES and do not need CITES documents.

Decision Tree for Export of Appendix-I Plants



[1] Cultivated specimens (see § 23.5) that do not meet the criteria as artificially propagated are treated as wild.

B

BILLING CODE 4310–55–C

§ 23.20 What CITES documents are required for international trade?

(a) *Purpose.* Articles III, IV, and V of the Treaty give the types of standard CITES documents that must accompany an Appendix-I, -II, or -III specimen in international trade. Articles VII and XIV recognize some exemptions and provide that a CITES document must accompany most exempt specimens.

(b) *Stricter national measures.* Before importing, introducing from the sea, exporting, or re-exporting a specimen, check with the Management Authorities of all countries concerned to obtain any documentation required under stricter national measures.

(c) *CITES documents.* Except as provided in the regulations in this part, you must have a valid CITES document to engage in international trade in any CITES specimen.

(d) *CITES exemption documents.* The following table lists the CITES exemption document that you must obtain before conducting a proposed activity with an exempt specimen (other than specimens exempted under § 23.92). If one of the exemptions does not apply to the specimen, you must obtain a CITES document as provided in paragraph (e) of this section. The first column in the following table alphabetically lists the type of specimen or activity that may qualify for a CITES exemption document. The last column indicates the section of this part that contains information on the application procedures, provisions, criteria, and conditions specific to each CITES exemption document, as follows:

Type of specimen or activity	Appendix	CITES exemption document	Section
(1) Artificially propagated plant (see paragraph (d)(4) of this section for an Appendix-I plant propagated for commercial purposes)	I, II, or III	CITES document with source code "A"[1]	23.40
(2) Artificially propagated plant from a country that has provided copies of the certificates, stamps, and seals to the Secretariat	II or III	Phytosanitary certificate with CITES statement[1]	23.23(f)
(3) Bred-in-captivity wildlife (see paragraph (d)(5) of this section for Appendix-I wildlife bred in captivity for commercial purposes)	I, II, or III	CITES document with source code "C"[1]	23.41
(4) Commercially propagated Appendix-I plant	I	CITES document with source code "D"[1]	23.47
(5) Commercially bred Appendix-I wildlife from a breeding operation registered with the CITES Secretariat	I	CITES document with source code "D"[1]	23.46
(6) Export of certain marine specimens protected under a pre-existing treaty, convention, or international agreement for that species	II	CITES document indicating that the specimen was taken in accordance with provisions of the applicable treaty, convention, or international agreement	23.36(e) 23.39(e)
(7) Hybrid plants	I, II, or III	CITES document unless the specimen qualifies as an exempt plant hybrid	23.42
(8) Hybrid wildlife	I, II, or III	CITES document unless the specimen qualifies as an exempt wildlife hybrid	23.43
(9) In-transit shipment (see paragraph (d)(14) of this section for sample collections covered by an ATA carnet)	I, II, or III	CITES document designating importer and country of final destination	23.22
(10) Introduction from the sea under a pre-existing treaty, convention, or international agreement for that species	II	Document required by applicable treaty, convention, or international agreement, if appropriate	23.39(d)
(11) Noncommercial loan, donation, or exchange of specimens between scientific institutions registered with the CITES Secretariat	I, II, or III	A label indicating CITES and the registration codes of both institutions and, in the United States, a CITES certificate of scientific exchange that registers the institution[3]	23.48
(12) Personally owned live wildlife for multiple cross-border movements	I, II, or III	CITES certificate of ownership[2]	23.44
(13) Pre-Convention specimen	I, II, or III	CITES document indicating pre-Convention status[1]	23.45
(14) Sample collection covered by an ATA carnet	I[4], II, or III	CITES document indicating sample collection[2]	23.50
(15) Traveling exhibition	I, II, or III	CITES document indicating specimens qualify as pre-Convention, bred in captivity, or artificially propagated[2]	23.49

[1] Issued by the Management Authority in the exporting or re-exporting country.
[2] Issued by the Management Authority in the owner's country of usual residence.
[3] Registration codes assigned by the Management Authorities in both exporting and importing countries.
[4] Appendix-I species bred in captivity or artificially propagated for commercial purposes (see §§ 23.46 and 23.47).

(e) *Import permits, export permits, re-export certificates, and certificates of origin.* Unless one of the exemptions under paragraph (d) of this section or § 23.92 applies, you must obtain the following CITES documents before conducting the proposed activity:

Appendix	Type of CITES document(s) required
I	Import permit (§ 23.35) and either an export permit (§ 23.36) or re-export certificate (§ 23.37)
II	Export permit (§ 23.36) or re-export certificate (§ 23.37)
III	Export permit (§ 23.36) if the specimen originated in a country that listed the species; certificate of origin (§ 23.38) if the specimen originated in a country other than the listing country, unless the listing annotation indicates otherwise; or re-export certificate for all re-exports (§ 23.37)

(f) *Introduction-from-the-sea certificates.* For introduction from the sea of Appendix-I or Appendix-II specimens, you must obtain an introduction-from-the-sea certificate before conducting the proposed activity, unless the exemption in paragraph (d)(10) of this section applies (see § 23.39). The export of a specimen that was previously introduced from the sea will be treated as an export (see § 23.36 for export, § 23.36(e) and § 23.39(e) for export of exempt specimens, or § 23.37 for re-export). Although an Appendix-III specimen does not require a CITES document to be introduced from the sea, the subsequent international trade of the specimen would be considered an export. For export of an Appendix-III specimen that was introduced from the sea you must obtain an export permit (§ 23.36) if the export is from the country that listed the species in Appendix III, a certificate of origin (§ 23.38) if the export is from a country other than the listing country, or a re-export certificate for all re-exports (§ 23.37).

§ 23.21 What happens if a country enters a reservation for a species?

(a) *Purpose.* CITES is not subject to general reservations. Articles XV, XVI, and XXIII of the Treaty allow a Party to enter a specific reservation on a species listed in Appendix I, II, or III, or on parts, products, or derivatives of a species listed in Appendix III.

(b) *General provision.* A Party can enter a reservation in one of the following ways:

(1) A Party must provide written notification to the Depositary Government (Switzerland) on a specific new or amended listing in the Appendices within 90 days after the CoP that adopted the listing, or at any time for Appendix-III species.

(2) A country must provide written notification on a specific species listing when the country ratifies, accepts, approves, or accedes to CITES.

(c) *Requesting the United States take a reservation.* You may submit information relevant to the issue of whether the United States should take a reservation on a species listing to the U.S. Management Authority. The request must be submitted within 30 calendar days after the last day of the CoP where a new or amended listing of a species in Appendix I or II occurs, or at any time for a species (or its parts, products, or derivatives) listed in Appendix III.

(d) *Required CITES documents.* Except as provided in paragraph (d)(2) of this section, Parties treat a reserving Party as if it were a non-Party for trade in the species concerned (including parts, products, and derivatives, as appropriate). The following table indicates when CITES documents must accompany a shipment and which Appendix should appear on the face of the document:

If	Then
(1) The shipment is between a Party and a reserving Party, or the shipment is from a non-Party to a reserving Party and is in transit through a Party	The shipment must be accompanied by a valid CITES document(s) (see § 23.26) that indicates the CITES Appendix in which the species is listed.
(2) The shipment is from a reserving Party to another reserving Party[1] or non-Party and is in transit through a Party	The shipment must be accompanied by a valid CITES document(s) (see § 23.26) that indicates the CITES Appendix in which the species is listed.[2]
(3) The shipment is between a reserving Party and another reserving Party[1] or non-Party and is not in transit through a Party	No CITES document is required.[2]

[1] Both reserving Parties must have a reservation for the same species, and if the species is listed in Appendix III, a reservation for the same parts, products, and derivatives.

[2] CITES recommends that reserving Parties treat Appendix-I species as if listed in Appendix II and issue CITES documents based on Appendix-II permit criteria (see § 23.36). However, the CITES document must show the specimen as listed in Appendix I. If the United States entered a reservation, such a CITES document would be required.

(e) *Reservations taken by countries.* You may consult the CITES website or contact us (see § 23.7) for a list of countries that have taken reservations and the species involved.

§ 23.22 What are the requirements for in-transit shipments?

(a) *Purpose.* Article VII(1) of the Treaty allows for a shipment to transit an intermediary country that is a Party before reaching its final destination without the need for the intermediary Party to issue CITES documents. To control any illegal trade, Parties are to inspect, to the extent possible under their national legislation, specimens in transit through their territory to verify the presence of valid documentation. See § 23.50 for in-transit shipment of sample collections covered by an ATA carnet.

(b) *Document requirements.* An in-transit shipment does not require a CITES document from an intermediary country, but must be accompanied by all of the following documents:

(1) Unless the specimen qualifies for an exemption under § 23.92, a valid original CITES document, or a copy of

the valid original CITES document, that designates the name of the importer in the country of final destination and is issued by the Management Authority of the exporting or re-exporting country. A copy of a CITES document is subject to verification.

(2) For shipment of an Appendix-I specimen, a copy of a valid import permit that designates the name of the importer in the country of final destination, unless the CITES document in paragraph (b)(1) of this section is a CITES exemption document (see § 23.20(d)).

(3) Transportation and routing documents that show the shipment has been consigned to the same importer and country of final destination as designated on the CITES document.

(c) *Shipment requirements.* An in-transit shipment, including items in an on-board store, must meet the following:

(1) When in an intermediary country, an in-transit shipment must stay only for the time needed to immediately transfer the specimen to the mode of transport used to continue to the final destination and remain under customs control. Other than during immediate transfer, the specimen may not be stored in a duty-free, bonded, or other kind of warehouse or a free trade zone.

(2) At any time during transit, an in-transit shipment must not be sold, manipulated, or split unless authorized by the Management Authority of the intermediary country for inspection or enforcement purposes.

(d) *Reserving Party or non-Party.* All the requirements of this section apply to shipments to or from a reserving Party or non-Party that are being transshipped through a Party. The CITES document must treat the specimen as listed in the Appendix as provided in § 23.21(d).

(e) *Specimen protected by other regulations.* Shipment of a specimen that is also listed as a migratory bird (part 10 of this subchapter), injurious wildlife (part 16 of this subchapter), endangered or threatened species (parts 17 of this subchapter and 222–224 of this title), marine mammal (parts 18 of this subchapter and 216 of this title), or bald or golden eagle (part 22 of this subchapter), and is moving through the United States is considered an import, and cannot be treated as an in-transit shipment (see § 23.3).

§ 23.23 What information is required on U.S. and foreign CITES documents?

(a) *Purpose.* Article VI of the Treaty provides standard information that must be on a permit and certificate issued under Articles III, IV, and V. To identify a false or invalid document, any CITES document, including a CITES exemption document issued under Article VII, must contain standardized information to allow a Party to verify that the specimen being shipped is the one listed on the document and that the trade is consistent with the provisions of the Treaty.

(b) *CITES form.* A CITES document issued by a Party must be on a form printed in one or more of the three working languages of CITES (English, Spanish, or French). A CITES document from a non-Party may be in the form of a permit or certificate, letter, or any other form that clearly indicates the nature of the document and includes the information in paragraphs (c) through (e) of this section and the additional information in § 23.25.

(c) *Required information.* Except for a phytosanitary certificate used as a CITES certificate for artificially propagated plants in paragraph (f) of this section, or a customs declaration label used to identify specimens being moved between registered scientific institutions (§ 23.48(e)(5)), a CITES document issued by a Party or non-Party must contain the information set out in this paragraph (listed alphabetically). Specific types of CITES documents must also contain the additional information identified in paragraph (e) of this section. A CITES document is valid only when it contains the following information:

Required information	Description
(1) Appendix	The CITES Appendix in which the species, subspecies, or population is listed (see § 23.21 when a Party has taken a reservation on a listing).
(2) Applicant's signature	The applicant's signature if the CITES document includes a place for it.
(3) Bill of lading, air waybill, or flight number	As applicable for export or re-export: (i) by ocean or air cargo, the bill of lading or air waybill number or (ii) in accompanying baggage, the flight number, as recorded on the CITES document by the inspecting official at the port, if known at the time of validation or certification.
(4) Dates	Date of issue and date of expiration ("valid until" date on the standardized CITES form), which is midnight of the date on the CITES document. See § 23.54 for the length of validity for different types of CITES documents.
(5) Description of the specimen	A complete description of the specimen, including whether live or the type of goods. The sex and age of a live specimen should be recorded, if possible. Such information must be in English, Spanish, or French on a CITES document from a Party. If a code is used to indicate the type of specimen, it must agree with the *Guidelines for preparation and submission of CITES annual reports* available from the CITES website or us (see § 23.7).
(6) Document number	A unique control number. We use a unique 12-character number. The first two characters are the last two digits of the year of issuance, the next two are the two-letter ISO country code, followed by a six-digit serial number, and two digits or letters used for national informational purposes.

Required information	Description
(7) Humane transport of live wildlife	If the CITES document authorizes the export or re-export of live wildlife, a statement that the document is valid only if the transport conditions comply with CITES' *Guidelines for transport and preparation for shipment of live wild animals and plants*, or in the case of air transport of wildlife, with the *International Air Transport Association Live Animals Regulations*. The shipment must comply with the requirements of CITES'*Guidelines for transport and preparation for shipment of live wild animals and plants*, adopted by the Parties in 1979 and revised in 1981, or, in the case of air transport of wildlife, the Live Animals Regulations (LAR), 33rd edition, October 1, 2006, by the International Air Transport Association (IATA), Reference Number: 9105-33, ISBN 92-9195-818-2. The incorporation by reference of these documents was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of CITES' *Guidelines for transport and preparation for shipment of live wild animals and plants* may be obtained from the CITES Secretariat, International Environment House, Chemin des Anémones, CH-1219, Châtelaine, Geneva, Switzerland, or through the Internet at *http://www.cites.org/eng/resources/transport/E-TranspGuide.pdf*. Copies of the IATA LAR may be obtained from IATA, 800 Place Victoria, P.O. Box 113, Montreal, Quebec, Canada H4Z 1M1, by calling 1-800-716-6326, or ordering through the Internet at *http://www.iata.org*. Copies of these documents may be inspected at the U.S. Management Authority, Fish and Wildlife Service, 4401 N. Fairfax Dr., Arlington, VA 22203 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*.
(8) Identification of the specimen	Any unique identification number or mark (such as a tag, band, ring, microchip, label, or serial number), including any mark required under these regulations or a CITES listing annotation. For a microchip, the microchip code, trademark of the transponder manufacturer and, where possible, the location of the microchip in the specimen. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have equipment on hand to read the microchip at the time of import, export, or re-export.
(9) Management Authority	The complete name and address of the issuing Management Authority as included in the CITES directory, which is available from the CITES website or us (see § 23.7).
(10) Name and address	The complete name and address, including country, of the exporter and importer.
(11) Purpose of transaction	The purpose of the transaction identified either through a written description of the purpose of the transaction or by using one of the codes given in paragraph (d) of this section. The code is determined by the issuing Management Authority through information submitted with an application. This is not required for a certificate of origin.
(12) Quantity	The quantity of specimens authorized in the shipment and, if appropriate, the unit of measurement using the metric system: (i) The unit of measurement should be appropriate to the type of specimen and agree with the *Guidelines for the preparation and submission of CITES annual reports* available from the CITES website or us (see § 23.7). General descriptions such as ''one case'' or ''one batch'' are not acceptable. (ii) Weight should be in kilograms. If weight is used, net weight (weight of the specimen alone) must be stated, not gross weight that includes the weight of the container or packaging. (iii) Volume should be in cubic meters for logs and sawn wood and either square meters or cubic meters for veneer and plywood. (iv) For re-export, if the type of good has not changed since being imported, the same unit of measurement as on the export permit must be used, except to change to units that are to be used in the CITES annual report.
(13) Scientific name	The scientific name of the species, including the subspecies when needed to determine the level of protection of the specimen under CITES, using standard nomenclature as it appears in the CITES Appendices or the references adopted by the CoP. A list of current references is available from the CITES website or us (see § 23.7). A CITES document may contain higher-taxon names in lieu of the species name only under one of the following circumstances: (i) The CoP has agreed that the use of a higher-taxon name is acceptable for use on CITES documents. (A) If the genus cannot be readily determined for coral rock, the scientific name to be used is the order Scleractinia. (B) Live and dead coral must be identified to the level of species except where the CoP has agreed that identification to genus is acceptable. A current list of coral taxa identifiable to genus is available from the CITES website or us (see § 23.7). (C) Re-export of worked skins or pieces of *Tupinambis* species that were imported before August 1, 2000, may indicate *Tupinambis* spp. (ii) The issuing Party can show the use of a higher-taxon name is well justified and has communicated the justification to the Secretariat. (iii) The item is a pre-Convention manufactured product containing a specimen that cannot be identified to the species level.
(14) Seal or stamp	The embossed seal or ink stamp of the issuing Management Authority.
(15) Security stamp	If a Party uses a security stamp, the stamp must be canceled by an authorized signature and a stamp or seal, preferably embossed. The number of the stamp must also be recorded on the CITES document.

Required information	Description
(16) Signature	An original handwritten signature of a person authorized to sign CITES documents for the issuing Management Authority. The signature must be on file with the Secretariat.
(17) Signature name	The name of the person who signed the CITES document.
(18) Source	The source of the specimen. For re-export, unless there is information to indicate otherwise, the source code on the CITES document used for import of the specimen must be used. See § 23.24 for a list of codes.
(19) Treaty name	Either the full name or acronym of the Treaty, or the CITES logo.
(20) Type of CITES document	The type of CITES document (import, export, re-export, or other): (i) If marked ''other,'' the CITES document must indicate the type of document, such as certificate for artificially propagated plants, certificate for wildlife bred in captivity, certificate of origin, certificate of ownership, introduction-from-the-sea certificate, pre-Convention certificate, sample collection covered by an ATA carnet, scientific exchange certificate, or traveling-exhibition certificate. (ii) If multiple types are authorized on one CITES document, the type that applies to each specimen must be clearly indicated.
(21) Validation or certification	The actual quantity of specimens exported or re-exported: (i) Using the same units of measurement as those on the CITES document. (ii) Validated or certified by the stamp or seal and signature of the inspecting authority at the time of export or re-export.

(d) *Purpose of transaction*. If the purpose is not identified by a written description, the CITES document must contain one of the following codes:

Code	Purpose of transaction
B	Breeding in captivity or artificial propagation
E	Education
G	Botanical garden
H	Hunting trophy
L	Law enforcement/judicial/forensic
M	Medical research (including biomedical research)
N	Reintroduction or introduction into the wild
P	Personal
Q	Circus and traveling exhibition
S	Scientific
T	Commercial
Z	Zoo

(e) *Additional required information*. The following describes the additional information that is required for specific types of documents (listed alphabetically):

Type of document	Additional required information
(1) Annex (such as an attached inventory, conditions, or continuation pages of a CITES document)	The page number, document number, and date of issue on each page of an annex that is attached as an integral part of a CITES document. An authorized signature and ink stamp or seal, preferably embossed, of the Management Authority issuing the CITES document must also be included on each page of the annex. The CITES document must indicate an attached annex and the total number of pages.
(2) Certificate of origin (see § 23.38)	A statement that the specimen originated in the country that issued the certificate.
(3) Copy when used in place of the original CITES document	(i) Information required in paragraph (e)(7) of this section when the document authorizes export or re-export. (ii) A statement by the Management Authority on the face of the document authorizing the use of a copy when the document authorizes import.
(4) Export permit for a registered commercial breeding operation or nursery for Appendix-I specimens (see § 23.46)	The registration number of the operation or nursery assigned by the Secretariat, and if the exporter is not the registered operation or nursery, the name of the registered operation or nursery.
(5) Export permit with a quota	Number of specimens, such as 500/1,000, that were: (i) Exported thus far in the current calendar year, including those covered by the current permit (such as 500), and (ii) Included in the current annual quota (such as 1,000).
(6) Import permit (Appendix-I specimen) (see § 23.35)	A certification that the specimen will not be used for primarily commercial purposes and, for a live specimen, that the recipient has suitable facilities and expertise to house and care for it.

Type of document	Additional required information
(7) Replacement CITES document (see § 23.52)	When a CITES document replaces an already issued CITES document that was lost, damaged, stolen, or accidentally destroyed: (i) If a newly issued CITES document, indication it is a ''replacement,'' the number and date of issuance of the CITES document that was replaced, and reason for replacement. (ii) If a copy of the original CITES document, indication it is a ''replacement'' and a ''true copy of the original,'' a new original signature of a person authorized to sign CITES documents for the issuing Management Authority, the date signed, and reason for replacement.
(8) Partially completed documents (see § 23.51)	(i) A list of the blocks that must be completed by the permit holder. (ii) If the list includes scientific names, an inventory of approved species must be included on the face of the CITES document or in an attached annex. (iii) A signature of the permit holder, which acts as a certification that the information entered is true and accurate.
(9) Pre-Convention document (see § 23.45)	(i) An indication on the face of the CITES document that the specimen is pre-Convention. (ii) A date that shows the specimen was acquired before the date the Convention first applied to it.
(10) Re-export certificate (see § 23.37)	(i) The country of origin, the export permit number, and the date of issue. (ii) If previously re-exported, the country of last re-export, the re-export certificate number, and the date of issue. (iii) If all or part of this information is not known, a justification must be given.
(11) Retrospective CITES document (see § 23.53)	A clear statement that the CITES document is issued retrospectively and the reason for issuance.
(12) Sample collection covered by an ATA carnet (see § 23.50)	(i) A statement that the document covers a sample collection and is invalid unless accompanied by a valid ATA carnet. (ii) The number of the accompanying ATA carnet recorded by the Management Authority, customs, or other responsible CITES inspecting official.

(f) *Phytosanitary certificate.* A Party may use a phytosanitary certificate as a CITES document under the following conditions:

(1) The Party has provided copies of the certificate, stamps, and seals to the Secretariat.

(2) The certificate is used only when all the following conditions are met:

(i) The plants are being exported, not re-exported.

(ii) The plants are Appendix-II species, or are hybrids of one or more Appendix-I species or taxa that are not annotated to include hybrids.

(iii) The plants were artificially propagated in the exporting country.

(3) The certificate contains the following information:

(i) The scientific name of the species, including the subspecies when needed to determine the level of protection of the specimen under CITES, using standard nomenclature as it appears in the CITES Appendices or the references adopted by the CoP.

(ii) The type (such as live plant or bulb) and quantity of the specimens authorized in the shipment.

(iii) A stamp, seal, or other specific indication stating that the specimen is artificially propagated (see § 23.64).

§ 23.24 What code is used to show the source of the specimen?

The Management Authority must indicate on the CITES document the source of the specimen using one of the following codes, except the code ''O'' for pre-Convention, which should be used in conjunction with another code:

Source of specimen	Code
(a) Artificially propagated plant (see § 23.40): (1) An Appendix-II or -III artificially propagated specimen. (2) An Appendix-I plant specimen artificially propagated for noncommercial purposes or certain Appendix-I hybrids (see § 23.42) propagated for commercial purposes.	A
(b) Bred-in-captivity wildlife (see § 23.41): (1) An Appendix-II or -III specimen bred in captivity. (See paragraph (d)(1) of this section for wildlife that does not qualify as bred in captivity.) (2) An Appendix-I specimen bred for noncommercial purposes. (See paragraph (c)(1) of this section for an Appendix-I specimen bred for commercial purposes.)	C
(c) Bred in captivity or artificially propagated for commercial purposes (see §§ 23.46 and 23.47): (1) An Appendix-I wildlife specimen bred in captivity for commercial purposes at an operation registered with the Secretariat. (2) An Appendix-I plant specimen artificially propagated for commercial purposes at a nursery that is registered with the Secretariat or a commercial propagating operation that meets the requirements of § 23.47.	D

Source of specimen	Code
(d) Captive-bred wildlife (§ 23.36): (1) An Appendix-II or -III wildlife species that is captive-bred. (2) An Appendix-I wildlife species that is one of the following: (i) Captive-bred. (ii) Bred for commercial purposes, but the commercial breeding operation is not registered with the Secretariat. (iii) Bred for noncommercial purposes, but the facility does not meet the definition in § 23.5 because it is not involved in a cooperative conservation program.	F
(e) Confiscated or seized specimen (see § 23.78).	I
(f) Pre-Convention specimen (see § 23.45) (code to be used in conjunction with another code).	O
(g) Ranched wildlife (wildlife that originated from a ranching operation).	R
(h) Source unknown (must be justified on the face of the CITES document).	U
(i) Specimen taken from the wild: (1) For wildlife, this includes a specimen born in captivity from an egg collected from the wild or from wildlife that mated or exchanged genetic material in the wild. (2) For a plant, it includes a specimen propagated from a propagule collected from a wild plant, except as provided in § 23.64.	W

§ 23.25 What additional information is required on a non-Party CITES document?

(a) *Purpose.* Under Article X of the Treaty, a Party may accept a CITES document issued by a competent authority of a non-Party only if the document substantially conforms to the requirements of the Treaty.

(b) *Additional certifications.* In addition to the information in § 23.23(c) through (e), a CITES document issued by a non-Party must contain the following certifications on the face of the document:

Activity by a non-Party	Certification
(1) Export	(i) For Appendix-I and -II specimens, the Scientific Authority has advised that the export will not be detrimental to the survival of the species. (ii) The Management Authority is satisfied that the specimen was legally acquired.
(2) Import	For Appendix-I specimens, the import will be for purposes that are not detrimental to the survival of the species.

§ 23.26 When is a U.S. or foreign CITES document valid?

(a) *Purpose.* Article VIII of the Treaty provides that Parties take appropriate measures to enforce the Convention to prevent illegal trafficking in wildlife and plants.

(b) *Original CITES documents.* A separate original or a true copy of a CITES document must be issued before the import, introduction from the sea, export, or re-export occurs, and the document must accompany each shipment. No copy may be used in place of an original except as provided in § 23.23(e)(3) or when a shipment is in transit (see § 23.22). Fax or electronic copies are not acceptable.

(c) *Acceptance of CITES documents.* We will accept a CITES document as valid for import, introduction from the sea, export, or re-export only if the document meets the requirements of this section, §§ 23.23 through 23.25, and the following conditions:

Key phrase	Conditions for an acceptable CITES document
(1) Altered or modified CITES document	The CITES document has not been altered (including by rubbing or scratching out), added to, or modified in any way unless the change is validated on the document by the stamp and authorized signature of the issuing Management Authority, or if the document was issued as a partially completed document, the Management Authority lists on the face of the document which blocks must be completed by the permit holder.
(2) Annual reports	The Party issuing the CITES document has submitted annual reports and is not subject to any action under Article VIII paragraph 7(a) that would not allow trade in CITES species.
(3) CITES document	U.S. and foreign CITES documents must meet the general provisions and criteria in subparts C and E.
(4) Conditions	All conditions on the CITES document are met.
(5) Convention implementation	The Party issuing the CITES document is not subject to any action under Article VIII or Article XIII paragraph 3 that would not allow trade in the species.
(6) Extension of validity	The validity of a CITES document may not be extended except as provided in § 23.73 for certain timber species.

Key phrase	Conditions for an acceptable CITES document
(7) Fraudulent CITES document or CITES document containing false information	The CITES document is authentic and does not contain erroneous or misleading information.
(8) Humane transport	Live wildlife or plants were transported in compliance with CITES' *Guidelines for transport and preparation for shipment of live wild animals and plants*or, in the case of air transport of wildlife, the *International Air Transport Association Live Animals Regulations*. (See § 23.23(c)(7).)
(9) Legal acquisition	The Party or non-Party issuing the CITES document has made the required legal acquisition finding.
(10) Management Authority and Scientific Authority	The CITES document was issued by a Party or non-Party that has designated a Management Authority and Scientific Authority and has provided information on these authorities to the Secretariat.
(11) Name of importer and exporter	A CITES document is specific to the name on the face of the document and may not be transferred or assigned to another person.
(12) Non-detriment	The Party or non-Party issuing the CITES document has made the required non-detriment finding.
(13) Phytosanitary certificate	A phytosanitary certificate may be used to export artificially propagated plants only if the issuing Party has provided copies of the certificates, stamps, and seals to the Secretariat.
(14) Quota	For species with a quota on file with the Secretariat, the quantity exported from a country does not exceed the quota.
(15) Registered commercial breeding operation for Appendix-I wildlife	(i) The operation is included in the Secretariat's register. (ii) Each specimen is specifically marked, and the mark is described on the CITES document.
(16) Registered commercial nursery for Appendix-I plants	The operation is included in the Secretariat's register.
(17) Retrospective CITES documents	A CITES document was not issued retrospectively except as provided in § 23.53.
(18) Shipment contents	The contents of the shipment match the description of specimens provided on the CITES document, including the units and species. A shipment cannot contain more or different specimens or species than certified or validated on the CITES document at the time of export or re-export; the quantity of specimens validated or certified may be less, but not more, than the quantity stated at the time of issuance.
(19) Wild-collected specimen	A wild-collected specimen (indicated on the CITES document with a source code of "W") is not coming from a country that is outside the range of the species, unless we have information indicating that the species has been established in the wild in that country through accidental introduction or other means.

(d) *Verification of a CITES document.* We may request verification of a CITES document from the Secretariat or a foreign Management Authority before deciding whether to accept it under some circumstances, including, but not limited to, the following:

(1) We receive reliable information that indicates the need for CITES document verification.

(2) We have reasonable grounds to believe that a CITES document is not valid or authentic because the species is being traded in a manner detrimental to the survival of the species or in violation of foreign wildlife or plant laws, or any applicable Management or Scientific Authority finding has not been made.

(3) The re-export certificate refers to an export permit that does not exist or is not valid.

(4) We have reasonable grounds to believe that the document is fraudulent, contains false information, or has unauthorized changes.

(5) We have reasonable grounds to believe that the specimen identified as bred in captivity or artificially propagated is a wild specimen, was produced from illegally acquired parental stock, or otherwise does not qualify for these exemptions.

(6) The import of a specimen designated as bred in captivity or artificially propagated is from a non-Party. For an Appendix-I specimen, we must consult with the Secretariat.

(7) For a retrospectively issued CITES document, both the importing and exporting or re-exporting countries' Management Authorities have not agreed to the issuance of the document.

(8) For a replacement CITES document, we need clarification of the reason the document was issued.

§ 23.27 What CITES documents do I present at the port?

(a) *Purpose.* Article VIII of the Treaty provides that Parties establish an inspection process that takes place at a port of exit and entry. Inspecting officials must verify that valid CITES documents accompany shipments and take enforcement action when shipments do not comply with the Convention.

(b) *U.S. port requirements.* In the United States, you must follow the clearance requirements for wildlife in part 14 of this subchapter and for plants in part 24 of this subchapter and 7 CFR parts 319, 352, and 355, and the specific requirement in paragraphs (c) and (d) of this section.

(c) *General validation or certification process.* Officials in each country inspect the shipment and validate or certify the CITES document. The table in this paragraph (c) provides information on:

(1) The types of original CITES documents you must present to be validated or certified by the inspecting official to export or re-export from a country.

(2) When you need to surrender a copy of the original CITES document to

the inspecting official at the time of export or re-export.

(3) When you need to surrender the original CITES document to the inspecting official at the time of import or introduction from the sea.

Type of CITES document	Present original for export or re-export validation or certification	Surrender copy upon export or re-export	Surrender original upon import or introductionfrom the sea
Bred-in-captivity certificate	Required	Required	Required
Certificate for artificially propagated plants	Required	Required	Required
Certificate of origin	Required	Required	Required
Certificate of ownership	Required	Required	Not required; submit copy
Export permit	Required	Required	Required
Import permit	Not required	Required	Required
Introduction-from-the-sea certificate	Not applicable	Not applicable	Required
Multiple-use document	Required[1]	Required	Not required; submit copy
Phytosanitary certificate	Required	Required	Not required; submit copy
Pre-Convention document	Required	Required	Required
Re-export certificate	Required	Required	Required
Registered Appendix-I commercial breeding operation, export permit	Required	Required	Required
Registered Appendix-I nursery, export permit	Required	Required	Required
Replacement document where a shipment has been made and is in a foreign country	Not required	Not required	Required
Replacement document where a shipment has not left the United States	Required	Required	Required
Retrospective document	Not required	Not required	Required
Sample collection covered by an ATA carnet, CITES document	Required	Required	Not required; submit copy
Traveling-exhibition certificate	Required	Required	Not required; submit copy

[1] Original must be available for inspection, but permit conditions will indicate whether an original or copy is to be validated.

(d) *Customs declaration labels*. The customs declaration label used to identify specimens being moved between registered scientific institutions (§ 23.48) must be affixed to the shipping container. The label does not require export or re-export validation or certification at the port.

Subpart C—Application Procedures, Criteria, and Conditions

§ 23.32 How do I apply for a U.S. CITES document?

(a) To apply for a U.S. CITES document, you must complete a standard application form and submit it to the appropriate office shown on the top of the form.

(b) To determine the type of CITES document needed for your shipment, go to §§ 23.18 through 23.20 for further guidance.

(c) If a species is also regulated under another part of this subchapter (such as endangered or threatened species, see § 23.3), the requirements of all parts must be met. You may submit a single application that contains all the information needed to meet the requirements of CITES and other applicable parts.

(d) You must also follow the general permit procedures in part 13 of this subchapter.

(e) You should review the criteria in all applicable regulations in this subchapter that apply to the type of permit you are seeking before completing the application form.

(f) We will review your application to assess whether it contains the information needed to make the required findings.

(1) Based on available information, we will decide if any of the exemptions apply and what type of CITES document you need.

(2) If we need additional information, we will contact you. If you do not provide the information within 45 calendar days, we will abandon your application. If your application is abandoned and you wish to apply for a permit at a later time, you must submit a new application.

§ 23.33 How is the decision made to issue or deny a request for a U.S. CITES document?

(a) Upon receiving a complete application, we will decide whether to issue a CITES document by considering:

(1) The general criteria in § 13.21(b) of this subchapter and, if the species is protected under a separate law or treaty, criteria in any other applicable parts.

(2) The CITES issuance criteria provided in this subpart (see subpart D of this part for factors we consider in making certain findings).

(b) As needed, the U.S. Management Authority, including FWS Law Enforcement, will forward a copy of the application to the U.S. Scientific

Authority; State, tribal, or other Federal government agencies; or other applicable experts. We may also query the Secretariat and foreign Management and Scientific Authorities for information to use in making the required findings.

(c) You must provide sufficient information to satisfy us that all criteria specific to the proposed activity are met before we can issue a CITES document.

(d) We will base our decision on whether to issue or deny the application on the best available information.

§ 23.34 What kinds of records may I use to show the origin of a specimen when I apply for a U.S. CITES document?

(a) When you apply for a U.S. CITES document, you will be asked to provide information on the origin of the specimen that will be covered by the CITES document.

(1) You need to provide sufficient information for us to determine if the issuance criteria in this part are met (see the sections in this subpart for each type of CITES document).

(2) We require less detailed information when the import, introduction from the sea, export, or re-export poses a low risk to a species in the wild and more detailed information when the proposed activity poses greater risk to a species in the wild (see Subpart D of this part for factors we consider in making certain findings).

(b) Information you may want to provide in a permit application includes, but is not limited to, the following:

Source of specimen	Types of records
(1) Captive-bred or cultivated[1]	(i) Records that identify the breeder or propagator of the specimens that have been identified by birth, hatch, or propagation date and for wildlife by sex, size, band number, or other mark, or for plants by size or other identifying feature: (A) Signed and dated statement by the breeder or propagator that the specimen was bred or propagated under controlled conditions. (B) Name and address of the breeder or propagator as shown by documents such as an International Species Information System (ISIS) record, veterinary certificate, or plant nursery license. (ii) Records that document the breeding or propagating of specimens at the facility: (A) Number of wildlife (by sex and age- or size-class) or plants at the facility. (B) How long the facility has been breeding or propagating the species. (C) Annual production and mortalities. (D) Number of specimens sold or transferred annually. (E) Number of specimens added from other sources annually. (F) Transaction records with the date, species, quantity of specimens, and name and address of seller. (G) Marking system, if applicable. (H) Photographs or video of facility, including for wildlife any activities during nesting and production and rearing of young, and for plants, different stages of growth.
(2) Confiscated or seized	Copy of remission decision, legal settlement, or disposal action after forfeiture or abandonment, which demonstrates the applicant's legal possession.
(3) Exempt plant material	Records that document how you obtained the exempt plant material, including the name and address of the person from whom you received the plant material.
(4) Imported previously	(i) A copy of the cancelled CITES document that accompanied the shipment into the United States. (ii) For wildlife, copies of cleared Declarations for Importation or Exportation of Fish or Wildlife (Form 3–177) associated with each specimen.
(5) Pre-Convention	Records that show the specimen was acquired before the date the provisions of the Convention first applied to it, such as: (i) Receipt or invoice. (ii) Catalog, inventory list, photograph, or art book. (iii) Statement from a qualified appraiser attesting to the age of a manufactured product. (iv) CBP (formerly U.S. Customs Service) import documents. (v) Phytosanitary certificate. (vi) Veterinary document or breeding or propagation logs.
(6) Sequential ownership or purchase	(i) Records that specifically identify the specimen, give the name and address of the owner, and show the specimen's origin (pre-Convention, previously imported, wild-collected, or born or propagated in a controlled environment in the United States). (ii) Records that document the history of all transfers in ownership (generally not required for pre-Convention specimens).
(7) Unknown origin, for noncommercial purposes	A complete description of the circumstances under which the specimen was acquired (where, when, and from whom the specimen was acquired), including efforts made to obtain information on the origin of the specimen.

Source of specimen	Types of records
(8) Wild-collected	Records, such as permits, licenses, and tags, that demonstrate the specimen or the parental stock was legally removed from the wild under relevant foreign, Federal, tribal, State, or local wildlife or plant conservation laws or regulations: (i) If taken on private or tribal land, permission of the landowner if required under applicable law. (ii) If taken in a national, State, or local park, refuge, or other protected area, permission from the applicable agency, if required.

[1] If the wildlife was born in captivity from an egg collected from the wild or from parents that mated or exchanged genetic material in the wild, or the plant was propagated from a non-exempt propagule collected from a wild plant, see paragraph (b)(8) of this section.

(c) If you intend to engage in international trade with a CITES specimen in the future, you should keep sufficient records to establish your eligibility for a CITES document for as long as you possess the specimen, and if you sell, donate, or transfer ownership of the specimen, you should provide such records on the origin of the specimen to the new owner.

§ 23.35 What are the requirements for an import permit?

(a) *Purpose.* Article III(3) of the Treaty sets out the conditions under which a Management Authority can issue an import permit.

(b) *U.S. application forms.* Complete the appropriate form for the proposed activity and submit it to the U.S. Management Authority:

Type of application for an import permit for an Appendix-I specimen	Form no.
(1) CITES:	
Southern African Leopard, African Elephant, and Namibian Southern White Rhinoceros Sport-hunted Trophies	3–200–19
Appendix-I Plants	3–200–35
Appendix-I Wildlife	3–200–37
Appendix-I Biological Samples	3–200–29
(2) Endangered Species Act and CITES:	
ESA Plants	3–200–36
ESA Sport-hunted Trophies	3–200–20
ESA Wildlife	3–200–37
(3) Marine Mammal Protection Act and CITES:	
Marine Mammals	3–200–43
(4) Wild Bird Conservation Act and CITES:	
Personal Pet Bird	3–200–46
Under an Approved Cooperative Breeding Program	3–200–48
Scientific Research or Zoological Breeding/Display	3–200–47

(c) *Criteria.* The criteria in this paragraph (c) apply to the issuance and acceptance of U.S. and foreign import permits. When applying for a U.S. import permit, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for an import permit for an Appendix-I specimen	Section
(1) The proposed import would be for purposes that are not detrimental to the survival of the species.	23.61
(2) The specimen will not be used for primarily commercial purposes.	23.62
(3) The recipients are suitably equipped to house and care for any live wildlife or plant to be imported.	23.65
(4) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP.	23.23

(d) *U.S. standard conditions.* You must meet all of the provisions on use after import in § 23.55 and the standard conditions in § 23.56.

(e) *Prior issuance of an import permit.* For Appendix-I specimens, the Management Authority of the exporting country may:

(1) Issue an export permit for live or dead specimens or a re-export certificate for live specimens only after the Management Authority of the importing country has either issued an import permit or confirmed in writing that an import permit will be issued.

(2) Accept oral confirmation from the Management Authority of the importing country that an import permit will be issued in an emergency situation where the life or health of the specimen is threatened and no means of written communication is possible.

(3) Issue a re-export certificate for a dead specimen without confirmation that the import permit has been issued.

§ 23.36 What are the requirements for an export permit?

(a) *Purposes.* Articles III, IV, and V of the Treaty set out the conditions under which a Management Authority may issue an export permit for an Appendix-I, -II, or -III specimen. Article XIV sets out the conditions under which a

Management Authority may issue a document for export of certain Appendix-II marine specimens protected under a pre-existing treaty, convention, or international agreement.

(b) *U.S. application forms.* Complete the appropriate form for the proposed activity and submit it to the U.S. Management Authority. Form 3–200–26 may also be submitted to FWS Law Enforcement at certain ports or regional offices:

Type of application for an export permit	Form no.
(1) CITES:	
American Ginseng	3–200–34
Appendix-I Plants Artificially Propagated for Commercial Purposes	3–200–33
Biological Specimens	3–200–29
Captive-born Raptors	3–200–25
Captive-born Wildlife (except raptors)	3–200–24
Caviar/Meat of Paddlefish or Sturgeon, Removed from the Wild	3–200–76
Export of Skins/Products of Bobcat, Canada Lynx, River Otter, Brown Bear, Gray Wolf, and American Alligator Taken under an Approved State or Tribal Program	3–200–26
Personal Pets, One-time Export	3–200–46
Plants	3–200–32
Registration of a Native Species Production Facility	3–200–75
Single-use Permits under a Master File or an Annual Program File	3–200–74
Trophies by Taxidermists	3–200–28
Wildlife, Removed from the Wild	3–200–27
(2) Endangered Species Act and CITES:	
ESA Plants	3–200–36
ESA Wildlife	3–200–37
(3) Marine Mammal Protection Act and CITES:	
Biological Samples	3–200–29
Live Captive-held Marine Mammals	3–200–53
Take from the Wild for Export	3–200–43

(c) *Criteria.* The criteria in this paragraph (c) apply to the issuance and acceptance of U.S. and foreign export permits except as provided for certain marine specimens in paragraph (d) of this section. When applying for a U.S. permit or certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for an export permit	Appendix of the specimen			Section
	I	II	III	
(1) The wildlife or plant was legally acquired.	Yes	Yes	Yes	23.60
(2) The proposed export would not be detrimental to the survival of the species.	Yes	Yes	n/a	23.61
(3) An import permit has already been issued or the Management Authority of the importing country has confirmed that it will be issued.	Yes	n/a	n/a	23.35
(4) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP.	Yes	Yes	Yes	23.23
(5) Live wildlife or plants will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen.	Yes	Yes	Yes	23.23
(6) The specimen originated in a country that listed the species.	n/a	n/a	Yes	23.20
(7) For wildlife with the source code "W" or "F," the export is for noncommercial purposes. (See § 23.46 for the export of specimens that originated at a commercial breeding operation for Appendix-I wildlife that is registered with the Secretariat.)	Yes	n/a	n/a	–

(d) *Export of certain exempt marine specimens.* Article XIV(4) and (5) of the Treaty provide a limited exemption for Appendix-II marine species that are protected under another treaty, convention, or international agreement that was in force at the time CITES entered into force. When all of the following conditions are met, export of exempt Appendix-II marine wildlife or plants requires only that the shipment is accompanied by a document issued by the Management Authority of the exporting country indicating that the specimens were taken in accordance

with the provisions of the other international treaty, convention, or agreement:

(1) The exporting country is a CITES Party and is a party to an international treaty, convention, or agreement that affords protection to the species and was in force on July 1, 1975.

(2) The ship that harvested the specimen is registered in the exporting country.

(3) The specimen was taken within waters under the jurisdiction of the exporting country or in the marine environment not under the jurisdiction of any country.

(4) The specimen was taken in accordance with the other international treaty, convention, or agreement, including any quotas.

(5) The shipment is accompanied by any official document required under the other international treaty, convention, or agreement or otherwise required by law.

(e) *Export of exempt specimens from the United States.* To export a specimen exempted under paragraph (d) of this section, you must obtain a CITES document from the U.S. Management Authority that indicates the specimen was taken in accordance with the provisions of another international treaty, convention, or agreement that was in force on July 1, 1975.

(f) *U.S. application for export of exempt specimens.* To apply for a CITES exemption document under paragraph (e) of this section, complete the appropriate form for your activity and submit it to the U.S. Management Authority.

(g) *Criteria for certain exempt marine specimens.* The criteria in this paragraph (g) apply to the issuance and acceptance of U.S. and foreign export documents. To obtain a U.S. CITES document for export of specimens exempted under paragraph (d) of this section you must provide sufficient information for us to find that your proposed export meets all of the following issuance criteria:

(1) The specimen was taken in accordance with the provisions of an applicable international treaty, convention, or agreement that was in force on July 1, 1975.

(2) The scientific name of the CITES species is in the standard nomenclature in the CITES Appendices or references adopted by the CoP (see § 23.23).

(3) The ship that harvested the specimen is registered in the exporting country.

(4) The specimen was taken within waters under the jurisdiction of the exporting country or in the marine environment not under the jurisdiction of any country.

§ 23.37 What are the requirements for a re-export certificate?

(a) *Purposes.* Articles III, IV, and V of the Treaty set out the conditions under which a Management Authority may issue a re-export certificate for an Appendix-I, -II, or -III specimen.

(b) *U.S. application forms.* Complete the appropriate form for the proposed activity and submit it to the U.S. Management Authority. Form 3–200–73 may also be submitted to Law Enforcement at certain ports or regional offices:

Type of application for a re-export certificate	Form no.
(1) CITES:	
Biological Specimens	3–200–29
Plants	3–200–32
Single-use Permits under a Master File or an Annual Program File	3–200–74
Trophies by Taxidermists	3–200–28
Wildlife	3–200–73
(2) Endangered Species Act and CITES:	
ESA Plants	3–200–36
ESA Wildlife	3–200–37
(3) Marine Mammal Protection Act and CITES:	
Biological Samples	3–200–29
Live Captive-held Marine Mammals	3–200–53

(c) *Criteria.* The criteria in this paragraph (c) apply to the issuance and acceptance of U.S. and foreign re-export certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for a re-export certificate	Appendix of the specimen			Section
	I	II	III	
(1) The wildlife or plant was legally acquired.	Yes	Yes	Yes	23.60
(2) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP.	Yes	Yes	Yes	23.23
(3) For a live specimen, an import permit has already been issued or the Management Authority of the importing country has confirmed that it will be issued. This criterion does not apply to a specimen with the source code "D."	Yes	n/a	n/a	23.35
(4) Live wildlife or plants will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen.	Yes	Yes	Yes	23.23

Criteria for a re-export certificate	Appendix of the specimen			Section
	I	II	III	
(5) For re-export of a confiscated specimen, the proposed re-export would not be detrimental to the survival of the species.	Yes	Yes	n/a	23.61
(6) For wildlife with the source code "W" or "F," the re-export is for noncommercial purposes.	Yes	n/a	n/a	–

§ 23.38 What are the requirements for a certificate of origin?

(a) *Purpose.* Article V(3) of the Treaty requires that a shipment of Appendix-III specimens be accompanied by a certificate of origin when the shipment is not from a country that listed the species in Appendix III and is not a re-export.

(b) *U.S. application forms.* For a certificate of origin, complete one of the following forms and submit it to the U.S. Management Authority:

(1) Form 3–200–27 for wildlife removed from the wild.

(2) Form 3–200–24 for captive-born wildlife.

(3) Form 3–200–32 for plants.

(c) *Criteria.* The criteria in this paragraph (c) apply to the issuance and acceptance of U.S. and foreign certificates of origin. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The specimen originated in the country of export, which is not a country that listed the species in Appendix III. In the case of a listing that is annotated to cover only a certain population, no CITES document is required if the listed population does not occur in the country of export. For U.S. applicants, the country of origin must be the United States.

(2) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP (see § 23.23).

(3) Live wildlife or plants will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen (see § 23.23).

§ 23.39 What are the requirements for an introduction-from-the-sea certificate?

(a) *Purpose.* Articles III(5), IV(6), and IV(7) of the Treaty set out the conditions under which a Management Authority may issue an introduction-from-the-sea certificate.

(b) *U.S. application form.* Complete Form 3–200–31 and submit it to the U.S. Management Authority.

(c) *Criteria.* The criteria in this paragraph (c) apply to the issuance and acceptance of U.S. certificates. You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for an introduction-from-the-sea certificate	Appendix of the specimen		Section
	I	II	
(1) The specimen was taken in the marine environment not under the jurisdiction of any country.	Yes	Yes	–
(2) The proposed introduction from the sea would not be detrimental to the survival of the species.	Yes	Yes	23.61
(3) The specimen will not be used for primarily commercial purposes.	Yes	n/a	23.62
(4) The recipients are suitably equipped to house and care for live wildlife or plants.	Yes	n/a	23.65
(5) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP.	Yes	Yes	23.23
(6) Live wildlife or plants will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen.	Yes	Yes	23.23

(d) *Exemption.* As allowed under Article XIV(4) and (5) of the Treaty, you may directly introduce into the United States any Appendix-II wildlife or plant taken in the marine environment that is not under the jurisdiction of any country without a CITES document when all of the following conditions are met:

(1) The United States is a party to an international treaty, convention, or agreement that affords protection to the species and was in force on July 1, 1975.

(2) The ship that harvested the specimen is registered in the United States.

(3) The specimen was taken in accordance with the other international treaty, convention, or agreement, including any quotas.

(4) The shipment is accompanied by any official document required under the other international treaty, convention, or agreement or otherwise required by U.S. law.

(e) *Export of exempt specimens.* To export a specimen exempted under paragraph (d) of this section, you must obtain a CITES document from the U.S. Management Authority that indicates the specimen was taken in accordance with the provisions of the other international treaty, convention, or agreement that was in force on July 1, 1975. See requirements in § 23.36 (e) through (g).

(f) *Appendix III.* Appendix-III species introduced from the sea do not require introduction-from-the-sea certificates. However, the subsequent international trade of an Appendix-III specimen introduced from the sea would be considered an export requiring a CITES document (see § 23.20(f)).

§ 23.40 What are the requirements for a certificate for artificially propagated plants?

(a) *Purpose.* Article VII(5) of the Treaty grants an exemption to plants that are artificially propagated when a Management Authority issues a certificate.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of a certificate for artificially propagated Appendix-I, -II, or -III plants:

(1) The certificate for artificially propagated plants and any subsequent re-export certificate must show the source code as ''A'' for artificially propagated.

(2) For an Appendix-I specimen that satisfies the requirements of this section, no CITES import permit is required.

(c) *U.S. application form.* Complete Form 3–200–33 and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for a certificate for artificially propagated plants	Appendix of the specimen			Section
	I	II	III	
(1) The plant was artificially propagated.	Yes	Yes	Yes	23.64
(2) The plant specimen is one of the following: (i) Was propagated for noncommercial purposes. (ii) Is part of a traveling exhibition. (iii) Is a hybrid of one or more Appendix-I species or taxa that is not annotated to include hybrids in the listing and was propagated for commercial or noncommercial purposes.	Yes	n/a	n/a	
(3) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP.	Yes	Yes	Yes	23.23
(4) The live plant will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen.	Yes	Yes	Yes	23.23

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56, you must meet all of the following conditions:

(1) You may not export or re-export a plant (including its parts, products, or derivatives) under this certificate if the plant was removed from the wild or grown directly from a wild seed, except for plants grown from exempt plant materials that qualify as artificially propagated.

(2) You may not export an Appendix-I species that was propagated for commercial purposes under this certificate, except for hybrids of one or more Appendix-I species or taxa that are not annotated to include hybrids in the listing.

(3) You may export a native plant under this certificate only when specifically approved for export and listed on the certificate, inventory sheet, or an approved species list.

(4) You may export a specimen under a higher-taxon name only if you identified the taxon in your application and we approved it on this certificate.

§ 23.41 What are the requirements for a bred-in-captivity certificate?

(a) *Purpose.* Article VII(5) of the Treaty grants an exemption to wildlife that is bred in captivity when a Management Authority issues a certificate.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of a certificate for Appendix-I, -II, or -III wildlife that was bred in captivity:

(1) The certificate and any subsequent re-export certificate must show the source code as ''C'' for bred in captivity.

(2) For an Appendix-I specimen that satisfies the requirements of this section, no CITES import permit is required.

(c) *U.S. application form.* Complete Form 3–200–24 and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for a bred-in-captivity certificate	Appendix of the specimen			Section
	I	II	III	
(1) The wildlife was bred in captivity.	Yes	Yes	Yes	23.63
(2) The wildlife specimen was bred for noncommercial purposes or is part of a traveling exhibition.	Yes	n/a	n/a	23.5
(3) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP.	Yes	Yes	Yes	23.23
(4) Live wildlife will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen.	Yes	Yes	Yes	23.23

§ 23.42 What are the requirements for a plant hybrid?

General provisions. Except as provided in § 23.92, the export, re-export, or import of a plant hybrid of a CITES species must be accompanied by a valid CITES document that shows the Appendix of the specimen as follows:

Question on a plant hybrid	Answer and status of specimen
(a) Is the specimen an artificially propagated hybrid of one or more Appendix-I species or taxa?	(1) **YES**. Continue to paragraph (b) of this section. (2) **NO**. Continue to paragraph (c) of this section.
(b) Is one or more of the Appendix-I species or taxa in paragraph (a) of this section annotated to include hybrids?	(1) **YES**. The hybrid is listed in Appendix I. (2) **NO**. The hybrid is listed in Appendix I, but may be granted a certificate for artificially propagated plants even if propagated for commercial purposes.
(c) Is the specimen a hybrid that includes two or more CITES species or taxa in its lineage?	(1) **YES**. Consider the specimen to be listed in the more restrictive Appendix, with Appendix I being the most restrictive and Appendix III the least. (2) **NO**. Continue to paragraph (d) of this section.
(d) Is the specimen a hybrid that includes one CITES species or taxon in its lineage?	(1) **YES**. Consider the specimen to be listed in the Appendix in which the species or taxon is listed in the CITES Appendices. (2) **NO**. The hybrid is not regulated by CITES.

§ 23.43 What are the requirements for a wildlife hybrid?

(a) *Definition*. For the purposes of this section, recent lineage means the last four generations of a specimen's ancestry (direct line of descent).

(b) *U.S. and foreign general provisions*. Except as provided in paragraph (f) of this section, the import, export, or re-export of a hybrid CITES wildlife specimen must be accompanied by a valid CITES document.

(c) *CITES documents*. All CITES documents must show the wildlife hybrid listed in the following Appendix:

If at least one specimen in the recent lineage is listed in:	Then the specimen is listed in:
(1) Appendix I	Appendix I
(2) Appendix II, and an Appendix-I species is not included in the recent lineage	Appendix II
(3) Appendix III, and an Appendix-I or -II species is not included in the recent lineage	Appendix III

(d) *U.S. application for wildlife hybrid*. To apply for a CITES document, complete the appropriate form for the proposed activity (see §§ 23.18 through 23.20) and submit it to the U.S. Management Authority.

(e) *Criteria*. For export of a hybrid that contains a CITES species in its recent lineage, you must meet the requirements of § 23.36.

(f) *Exempt wildlife hybrids*. The following provisions apply to import, export, or re-export of exempt wildlife hybrids:

(1) A hybrid between a CITES species and a non-CITES species may be exempt from CITES document requirements if there are no purebred CITES species in the previous four generations of the specimen's ancestry (direct line of descent). Under this section, a hybrid between two CITES species is not exempt.

(2) For import, export, or re-export of an exempt wildlife hybrid without CITES documents, you must provide information at the time of import or export to clearly demonstrate that your specimen has no purebred CITES species in the previous four generations of its ancestry. Although a CITES document is not required, you must follow the clearance requirements for wildlife in part 14 of this subchapter, including the prior notification requirements for live wildlife.

§ 23.44 What are the requirements to travel internationally with my personally owned live wildlife?

(a) *Purpose*. A Management Authority may use the exemption in Article VII(3) of the Treaty to issue a certificate of ownership that authorizes frequent cross-border movements of personally owned live wildlife for personal use.

(b) *U.S. and foreign general provisions*. The following provisions apply to the issuance and acceptance of a certificate of ownership for frequent international travel with live wildlife for personal use:

(1) The certificate must be obtained from the Management Authority in the country of the owner's primary residence.

(2) Parties should treat the certificate like a passport for import to and export or re-export from each country and should not collect the original certificate at the border.

(3) If offspring are born or an additional specimen is acquired while the owner is outside his or her country of primary residence, the owner must obtain the appropriate CITES document for the export or re-export of the wildlife, not a certificate of ownership, from the Management Authority of that country.

(4) Upon returning home, the owner may apply for a certificate of ownership for wildlife born or acquired overseas.

(c) *U.S. application form*. Complete Form 3–200–64 and submit it to the U.S. Management Authority.

(d) *Criteria*. The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The traveler owns the live wildlife and it will accompany the owner.

(2) The cross-border movement will be frequent and for personal use, including, but not limited to, companionship or use in a noncommercial competition such as falconry.

(3) To apply for a U.S. certificate, the owner resides in the United States.

(4) The wildlife was legally acquired (see § 23.60).

(5) The owner does not intend to sell, donate, or transfer the wildlife while traveling internationally.

(6) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP (see § 23.23).

(7) The Management Authority of the country of import has agreed to the cross-border movement.

(8) The wildlife is securely marked or uniquely identified in such a manner that the border official can verify that the specimen and CITES document correspond.

(9) The wildlife is transported and cared for in a way that minimizes risk of injury, damage to health, or cruel treatment of the specimen (see § 23.23).

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56, all of the following conditions must be met:

(1) You must accompany the wildlife during any cross-border movement.

(2) You must transport the wildlife for personal use only.

(3) You must not sell, donate, or transfer the specimen while traveling internationally.

(4) You must present the certificate to the official for validation at each border crossing.

(5) If the certificate is lost, stolen, or accidentally destroyed, you must obtain a replacement certificate from the issuing Management Authority.

(6) If you no longer own the live wildlife, you must immediately return the original document to the issuing Management Authority and report on the disposition of the wildlife, such as death, sale, or transfer.

§ 23.45 What are the requirements for a pre-Convention specimen?

(a) *Purpose.* Article VII(2) of the Treaty exempts a pre-Convention specimen from standard permitting requirements in Articles III, IV, and V of the Treaty when the exporting or re-exporting country is satisfied that the specimen was acquired before the provisions of CITES applied to it and issues a CITES document to that effect.

(b) *U.S. and foreign general provisions.* The following general provisions apply to the issuance and acceptance of pre-Convention documents:

(1) Trade in a specimen under the pre-Convention exemption is allowed only if the importing country will accept a pre-Convention certificate.

(2) The pre-Convention date is the date the species was first listed under CITES regardless of whether the species has subsequently been transferred from one Appendix to another.

(3) For a pre-Convention Appendix-I specimen, no CITES import permit is required.

(4) The pre-Convention exemption does not apply to offspring or cell lines of any wildlife or plant born or propagated after the date the species was first listed under CITES.

(c) *U.S. application form.* Complete Form 3–200–23 (wildlife) or Form 3–200–32 (plants) and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that the specimen meets all of the following criteria:

(1) The specimen was removed from the wild or born or propagated in a controlled environment before the date CITES first applied to it, or is a product (including a manufactured item) or derivative made from such specimen.

(2) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP (see § 23.23).

(3) Live wildlife or plants will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen.

(4) For the re-export of a pre-Convention specimen previously imported under a CITES document, the wildlife or plant was legally imported.

§ 23.46 What are the requirements for registering a commercial breeding operation for Appendix-I wildlife and commercially exporting specimens?

(a) *Purpose.* Article VII(4) of the Treaty provides that Appendix-I specimens that are bred in captivity for commercial purposes shall be deemed to be listed in Appendix II. This means that an Appendix-I specimen originating from a commercial breeding operation that is registered with the CITES Secretariat may be traded under an export permit or re-export certificate based on Appendix-II criteria. The specimen is still listed in Appendix I and is not eligible for any exemption granted to an Appendix-II species or taxon, including any exemption granted by an annotation (see § 23.92).

(b) *U.S. and foreign general provisions.* The following provisions apply to the registration of U.S. and foreign commercial breeding operations for Appendix-I wildlife:

(1) If the Management Authority is satisfied that the operation in its country meets the conditions for registration in paragraph (d) of this section, it will send the request to register a breeding operation to the Secretariat.

(2) The Secretariat will verify that the application is complete and notify the Parties of the request.

(3) If any Party objects to or expresses concern about the registration within 90 days from the date of the Secretariat's notification, the Secretariat will refer the application to the Animals Committee. The Committee has 60 days to respond to objections. The Secretariat will provide the recommendations of the Committee to the Management Authority of the Party that submitted the application and the Party that objected to the registration, and will facilitate a dialogue for resolution of the identified problems within 60 days.

(4) If the objection is not withdrawn or the identified problems are not resolved, approval of the registration will require a two-thirds majority vote by the Parties at the next CoP or by a postal vote.

(5) If other operations have already been registered for the species, the Secretariat may send the request to appropriate experts for advice only if significant new information is available or if there are other reasons for concern.

(6) If the Secretariat is not satisfied that the operation meets the conditions for registration, it will provide the Management Authority that submitted the registration request with a full explanation of the reasons for rejection and indicate the specific conditions that must be met before the registration can be resubmitted for further consideration.

(7) When the Secretariat is satisfied that the operation meets the registration requirements, it will include the operation in its register.

(8) Operations are assigned an identification number and listed in the official register. Registration is not final until the Secretariat notifies all Parties.

(9) If a Party believes that a registered operation does not meet the bred-in-captivity requirements, it may, after consultation with the Secretariat and the Party concerned, propose that the CoP delete the operation from the register by a two-thirds vote of the Parties. Once an operation has been deleted, it must re-apply and meet the registration requirements to be reinstated.

(10) The Management Authority, in collaboration with the Scientific

Authority, of a country where any registered operation is located must monitor the operation to ensure that it continues to meet the registration requirements. The Management Authority will advise the Secretariat of any major change in the nature of the operation or in the types of products being produced for export, and the Animals Committee will review the operation to determine whether it should remain registered.

(11) A Party may unilaterally request the removal of a registered operation within its jurisdiction by notifying the Secretariat.

(12) An Appendix-I specimen may not be imported for purposes of establishing or augmenting a commercial breeding operation, unless the specimen is pre-Convention (see § 23.45) or was bred at a commercialbreeding operation that is registered with the CITES Secretariat as provided in this section.

(c) *U.S. application to register.* Complete Form 3–200–65 and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the registration of U.S. and foreign commercial breeding operations for Appendix-I wildlife. For your breeding operation to be registered in the United States, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for registering a commercial breeding operation for Appendix-I wildlife	Section
(1) The operation breeds wildlife for commercial purposes.	23.5
(2) The parental stock was legally acquired.	23.60
(3) The wildlife meets bred-in-captivity criteria.	23.63
(4) Where the establishment of a breeding operation involves the removal of animals from the wild (allowable only under exceptional circumstances and only for native species), the operation must demonstrate to the satisfaction of the Management Authority, on advice of the Scientific Authority and of the Secretariat, that the removal is or was not detrimental to the conservation of the species.	–
(5) The potential escape of specimens or pathogens from the facility does not pose a risk to the ecosystem and native species.	–
(6) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP.	23.23
(7) The breeding operation will make a continuing, meaningful contribution to the conservation of the species according to the conservation needs of the species.	–
(8) The operation will be carried out at all stages in a humane (non-cruel) manner.	–

(e) *Standard conditions of the registration.* In addition to the conditions in § 23.56, you must meet all of the following conditions:

(1) You must uniquely mark all specimens from the breeding operation in the manner proposed at the time of registration. Birds may be marked with closed bands, although other methods may be used.

(2) You may not import Appendix-I specimens for primarily commercial purposes (such as to establish a commercial captive-breeding operation) except from breeding operations registered for that species.

(3) You must provide information to the Management Authority each year on the year's production and your current breeding stock. You may provide the information by mail, fax, or e-mail.

(4) You must allow our agents to enter the premises at any reasonable hour to inspect wildlife held or to inspect, audit, or copy applicable records.

(f) *U.S. and foreign general provisions for export of specimens that originated in a registered breeding operation.* The following provisions apply to the issuance and acceptance of export permits for Appendix-I specimens bred at an operation registered with the CITES Secretariat:

(1) An export permit may be issued to the registered operation or to persons who have purchased a specimen that originated at the registered operation if the specimen has the unique mark applied by the operation. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have equipment on hand to read the microchip at the time of import, export, or re-export.

(2) The export permit, and any subsequent re-export certificate, must show the specimen as listed in Appendix I and the source code as ''D,'' and give the identification number of the registered breeding operation where the specimen originated.

(3) No CITES import permit is required for a qualifying specimen.

(g) *U.S. application form.* Complete Form 3–200–24 and submit it to the U.S. Management Authority.

(h) *Criteria.* The criteria in this paragraph (h) apply to the issuance and acceptance of U.S. and foreign export permits. When applying for a U.S. permit, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for an export permit	Section
(1) The specimen was bred at a commercial operation for Appendix-I wildlife that is registered with the CITES Secretariat.	23.46
(2) The proposed export would not be detrimental to the survival of the species.	23.61
(3) Live wildlife will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen.	23.23

§ 23.47 What are the requirements for export of an Appendix-I plant artificially propagated for commercial purposes?

(a) *Purpose.* Article VII(4) of the Treaty provides that Appendix-I plants artificially propagated for commercial purposes shall be deemed to be listed in Appendix II. This means that an Appendix-I specimen originating from a commercial nursery that is registered with the CITES Secretariat or that meets the requirements of this section may be traded under an export permit or re-export certificate based on Appendix-II criteria. The specimen is still listed in Appendix I and is not eligible for any exemption granted to an Appendix-II species or taxon, including any exemption granted by an annotation.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of export permits for Appendix-I specimens artificially propagated for commercial purposes:

(1) An Appendix-I specimen may not be imported for purposes of establishing or augmenting a nursery or commercial propagating operation, unless the specimen is pre-Convention (see § 23.45) or was propagated at a nursery that is registered with the CITES Secretariat or a commercial propagating operation that qualifies under paragraph (d) of this section, and the CITES document indicates the source code as ''D.''

(2) An export permit may be issued to a CITES-registered nursery, to a commercial propagating operation that qualifies under paragraph (d) of this section, or to persons who have acquired a specimen that originated at such a nursery or operation. No CITES import permit is required for a qualifying specimen.

(3) The export permit, and any subsequent re-export certificate, must show the specimen as listed in Appendix I and the source code as ''D,'' and if from a nursery registered with the Secretariat, give the identification number of the registered nursery where the specimen originated.

(c) *U.S. application form.* Complete Form 3–200–33 or Form 3–200–74 (for additional single-use permits under a master file or an annual export program file). Complete Form 3–200–32 for one-time export. Submit the completed form to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign export permits. When applying for a U.S. permit, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for an export permit	Section
(1) The specimen was propagated for commercial purposes.	23.5
(2) The parental stock was legally acquired.	23.60
(3) The proposed export would not be detrimental to the survival of the species.	23.61
(4) The plant was artificially propagated.	23.64
(5) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP.	23.23
(6) The live plant will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen.	23.23

(e) *Nursery registration.* [Reserved]

§ 23.48 What are the requirements for a registered scientific institution?

(a) *Purpose.* Article VII(6) of the Treaty grants an exemption that allows international trade in certain specimens for noncommercial loan, donation, or exchange between registered scientific institutions.

(b) *U.S. and foreign general provisions.* The following provisions apply to the registration of scientific institutions and acceptance of shipments from registered scientific institutions:

(1) The receiving and sending scientific institutions must be registered with the Management Authority in their country. Scientists who wish to use this exemption must be affiliated with a registered scientific institution.

(i) When a Management Authority is satisfied that a scientific institution has met the criteria for registration, it will assign the institution a five-character code consisting of the ISO country code and a unique three-digit number. In the case of a non-Party, the Secretariat will ensure that the institution meets the standards and assign it a unique code.

(ii) The Management Authority must communicate the name, address, and assigned code to the Secretariat, which maintains a register of scientific institutions and provides that information to all Parties.

(2) A registered scientific institution does not need separate CITES documents for the noncommercial loan, donation, or exchange of preserved, frozen, dried, or embedded museum specimens, herbarium specimens, or live plant material with another registered institution. The shipment must have an external label that contains information specified in paragraph (e)(5) of this section.

(c) *U.S. application to register as a scientific institution.* To register, complete Form 3–200–39 and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the registration of U.S. and foreign institutions for scientific exchange. To be issued a certificate of scientific exchange as a registered U.S. scientific institution, you must provide sufficient information for us to find that your institution meets all of the following criteria:

(1) Collections of wildlife or plant specimens are permanently housed and professionally curated, and corresponding records are kept.

(2) Specimens are accessible to all qualified users, including those from other institutions.

(3) Specimens are properly accessioned in a permanent catalog.

(4) Records are permanently maintained for loans and transfers to and from other institutions.

(5) Specimens are acquired primarily for research that is to be reported in scientific publications, and CITES specimens are not used for commercial purposes or as decorations.

(6) Collections are prepared and arranged in a way that ensures their accessibility to researchers.

(7) Specimen labels, permanent catalogs, and other records are accurate.

(8) Specimens are legally acquired and lawfully possessed under a country's wildlife and plant laws.

(9) Appendix-I specimens are permanently and centrally housed under the direct control of the institution.

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56, any activity conducted under a certificate of scientific exchange must meet all of the following conditions:

(1) Both scientific institutions involved in the exchange must be registered by the applicable Management Authorities (or the Secretariat in the case of a non-Party), and be included in the Secretariat's register of scientific institutions.

(2) An institution may send and receive only preserved, frozen, dried, or embedded museum specimens, herbarium specimens, or live plant materials that have been permanently and accurately recorded by one of the institutions involved in the exchange and that are traded as a noncommercial loan, donation, or exchange.

(3) An institution may use specimens acquired under a certificate of scientificexchange and their offspring only for scientific research or educational display at a scientific institution and may not use specimens for commercial purposes.

(4) The institution must keep records to show that the specimens were legally acquired.

(5) A customs declaration label must be affixed to the outside of each shipping container or package that contains all of the following:

(i) The acronym ''CITES.''

(ii) A description of the contents (such as ''herbarium specimens'').

(iii) The names and addresses of the sending and receiving registered institutions.

(iv) The signature of a responsible officer of the sending registered scientific institution.

(v) The scientific institution codes of both registered scientific institutions involved in the loan, donation, or exchange.

(6) A registered institution may destroy samples during analysis, provided that a portion of the sample is maintained and permanently recorded at a registered scientific institution for future scientific reference.

§ 23.49 What are the requirements for an exhibition traveling internationally?

(a) *Purpose.* Article VII(7) of the Treaty grants an exemption for specimens that qualify as bred in captivity, artificially propagated, or pre-Convention and are part of a traveling exhibition.

(b) *U.S. and foreign general provisions.* The following general provisions apply to the issuance and acceptance of a certificate for live wildlife and plants, or their parts, products, or derivatives in an exhibition that travels internationally:

(1) The Management Authority in the country of the exhibitor's primary place of business must have determined that the specimens are bred in captivity, artificially propagated, or pre-Convention and issued a traveling-exhibition certificate.

(2) The certificate must indicate that the wildlife or plant is part of a traveling exhibition.

(3) A separate certificate must be issued for each live wildlife specimen; a CITES document may be issued for more than one specimen for a traveling exhibition of live plants and dead parts, products, or derivatives of wildlife and plants.

(4) The certificate is not transferable.

(5) Parties should treat the certificate like a passport for import and export or re-export from each country, and should not collect the original certificate at the border.

(6) Parties should check specimens closely to determine that each specimen matches the certificate and ensure that each live specimen is being transported and cared for in a manner that minimizes the risk of injury, damage to health, or cruel treatment of the specimen.

(7) If offspring are born or a new specimen is acquired while the traveling exhibition is in another country, the exhibitor must obtain the appropriate CITES document for the export or re-export of the specimen from the Management Authority of that country.

(8) Upon returning home, the exhibitor may apply for a traveling-exhibition certificate for wildlife born overseas or for wildlife or plants acquired overseas.

(c) *U.S. application form.* Complete Form 3–200–30 for wildlife and Form 3–200–32 for plants, and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The traveling exhibition makes multiple cross-border movements, and will return to the country in which the exhibition is based before the certificate expires.

(2) The cross-border movement must be for exhibition, and not for breeding, propagating, or activities other than exhibition.

(3) The traveling exhibition is based in the country that issued the certificate.

(4) The specimen meets the criteria for a bred-in-captivity certificate, certificate for artificially propagated plants, or pre-Convention certificate.

(5) The exhibitor does not intend to sell or otherwise transfer the wildlife or plant while traveling internationally.

(6) The wildlife or plant is securely marked or identified in such a way that border officials can verify that the certificate and specimen correspond. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have equipment on hand to read the microchip at the time of import, export, or re-export.

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56, you must meet all of the following conditions:

(1) The certificate may be used by you, and you must not transfer or assign it to another person or traveling exhibition.

(2) You must transport the specimen internationally only for exhibition, not for breeding, propagating, or activities other than exhibition.

(3) You must present the certificate to the official for validation at each border crossing.

(4)For live plants, the quantity of plants must be reasonable for the purpose of the traveling exhibition.

(5) You must not sell or otherwise transfer the specimen, or any offspring born to such specimen, while traveling internationally.

(6) If the certificate is lost, stolen, or accidentally destroyed, you may obtain a replacement certificate only from the U.S. Management Authority.

(7) If you no longer own the wildlife or plants, or no longer plan to travel as a traveling exhibition, the original certificate must be immediately returned to the U.S. Management Authority.

(8) You must return the traveling exhibition to the United States before the certificate expires.

§ 23.50 What are the requirements for a sample collection covered by an ATA carnet?

(a) *Purpose.* Article VII(1) of the Treaty allows for the transit of specimens through or within a Party country while the specimens remain under customs control.

(b) *Definition.* For purposes of this section, *sample collection* means a set of legally acquired parts, products, or derivatives of Appendix-II or -III species, or Appendix-I species bred in captivity or artificially propagated for commercial purposes, that will:

(1) Cross international borders only for temporary exhibition or display purposes and return to the originating country.

(2) Be accompanied by a valid ATA carnet and remain under customs control.

(3) Not be sold or otherwise transferred while traveling internationally.

(c) *U.S. and foreign general provisions.* The following general provisions apply to the issuance and acceptance of a CITES document for the movement of sample collections:

(1) The Management Authority in the country where the sample collection originated must issue a CITES document that:

(i) Clearly specifies that the document was issued for a ''sample collection.''

(ii) Includes the condition in block 5, or an equivalent place, of the document that it is valid only if the shipment is accompanied by a valid ATA carnet and that the specimens must not be sold, donated, or otherwise transferred while outside the originating country.

(2) The number of the accompanying ATA carnet must be recorded on the CITES document, and if this number is not recorded by the Management Authority, it must be entered by a customs or other CITES enforcement official responsible for the original endorsement of the CITES document.

(3) The name and address of the exporter or re-exporter and importer must be identical, and the names of the countries to be visited must be indicated in block 5 or an equivalent place.

(4) The date of validity must not be later than that of the ATA carnet and the period of validity must not exceed 6 months from the date of issuance.

(5) At each border crossing, Parties must verify the presence of the CITES document, but allow it to remain with the shipment, and ensure that the ATA carnet is properly endorsed with an authorized stamp and signature by a customs official.

(6) The exporter or re-exporter must return the sample collection to the originating country prior to the expiration of the CITES document.

(7) Parties should check the CITES document and sample collection closely at the time of first export or re-export and upon its return to ensure that the contents of the sample collection have not been changed.

(8) For import into and export or re-export from the United States, the shipment must comply with the requirements for wildlife in part 14 of this subchapter and for plants in part 24 of this subchapter and 7 CFR parts 319, 352, and 355.

(d) *U.S. application form.* Complete Form 3–200–29 for wildlife and Form 3–200–32 for plants, and submit it to the U.S. Management Authority.

(e) *Criteria.* The criteria in this paragraph (e) apply to the issuance and acceptance of U.S. and foreign documents. When applying for a U.S. document, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The specimens meet the definition of a sample collection as provided in paragraph (b) of this section.

(2) The wildlife or plant specimens must be securely marked or identified in such a way that border officials can verify that the CITES document, ATA carnet, and specimens correspond.

(f) *U.S. standard conditions.* In addition to the conditions in § 23.56, you must meet all of the following conditions:

(1) You must transport the sample collection only for temporary exhibition or display purposes.

(2) You must not transfer or assign the CITES document toanother person.

(3) You must not sell, donate, or transfer specimens while traveling internationally.

(4) You must present the CITES document and the ATA carnet to the official for validation at each border crossing.

(5) You must return the sample collection to the United States prior to the expiration of the CITES document.

(6) If the CITES document is lost, stolen, or accidentally destroyed, you may obtain a replacement certificate only from the U.S. Management Authority.

(7) If you no longer own the sample collection, or no longer plan to travel with the sample collection, you must immediately return the original document to the U.S. Management Authority.

§ 23.51 What are the requirements for issuing a partially completed CITES document?

(a) *Purpose.* Under Article VIII(3), Parties are to ensure that CITES specimens are traded with a minimum of delay.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of partially completed CITES documents.

(1) A Management Authority may issue partially completed CITES documents only when:

(i) The permitted trade will have a negligible impact or no impact on the conservation of the species.

(ii) All provisions of CITES have been met.

(iii) The specimens are one of the following:

(A) Biological samples.

(B) Pre-Convention specimens.

(C) Specimens that qualify as bred in captivity or artificially propagated.

(D) Appendix-I specimens from registered commercial breeding operations.

(E) Appendix-I plants artificially propagated for commercial purposes.

(F) Other specimens that the Management Authority determines qualify for partially completed documents.

(2) A Management Authority may register applicants for species that may be traded under partially completed documents.

(3) Partially completed CITES documents require the permit holder to:

(i) Enter specific information on the CITES document or its annex as conditioned on the face of the CITES document.

(ii) Enter scientific names on the CITES document only if the Management Authority included an inventory of approved species on the face of the CITES document or an attached annex.

(iii) Sign the CITES document, which acts as a certification that the information entered is true and accurate.

(4) CITES documents issued for biological samples may be validated at the time of issuance provided that upon export the container is labeled with the CITES document number and indicates it contains CITES biological samples.

(c) *U.S. application form.* Complete the appropriate form for the proposed activity (see §§ 23.18 through 23.20) and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign CITES documents. When applying for a U.S. CITES document, you must provide sufficient information for us to find that your proposed activity meets the criteria in subpart C for the appropriate CITES document and the following criteria:

(1) The use of partially completed documents benefits both the permit holder and the issuing Management Authority.

(2) The proposed activity will have a negligible impact or no impact upon the conservation of the species.

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56 and any standard conditions in this part that apply to the specific CITES document, the following conditions must be met:

(1) You must enter the information specified in block 5, either on the face

of the CITES document or in an annex to the document.

(2) You may not alter or enter any information on the face of the CITES document or in an annex to the document that is not authorized in block 5 or an equivalent place.

(3) If you are authorized to enter a scientific name, it must be for a species authorized in block 5 or an equivalent place, or in an attached annex of the CITES document.

(4) You must sign the CITES document to certify that all information entered by you is true and correct.

§ 23.52 What are the requirements for replacing a lost, damaged, stolen, or accidentally destroyed CITES document?

(a) *Purpose*. A Management Authority may issue a duplicate document, either a copy of the original or a re-issued original, when a CITES document has been lost, damaged, stolen, or accidentally destroyed. These provisions do not apply to a document that has expired or that requires amendment. To amend or renew a CITES document, see part 13 of this subchapter.

(b) *U.S. and foreign general provisions*. The following provisions apply to the issuance and acceptance of a replacement CITES document:

(1) The permittee must notify the issuing Management Authority that the document was lost, damaged, stolen, or accidentally destroyed.

(2) The issuing Management Authority must be satisfied that the CITES document was lost, damaged, stolen, or accidentally destroyed.

(3) The issuing Management Authority should immediately inform the Management Authority in the country of destination and, for commercial shipments, the Secretariat.

(4) If the replacement CITES document is a copy, it must indicate that it is a ''replacement'' and a ''true copy of the original,'' contain a new dated original signature of a person authorized to sign CITES documents for the issuing Management Authority, and give the reason for replacement.

(5) If the replacement CITES document is a newly issued original document, it must indicate that it is a ''replacement,'' include the number and date of issuance of the document being replaced, and give the reason for replacement.

(c) *U.S. application procedures*. To apply for a replacement CITES document, you must do all of the following:

(1) Complete application Form 3–200–66 and submit it to the U.S. Management Authority.

(2) Consult the list to find the types of information you need to provide (more than one circumstance may apply to you):

If	Then
(i) The shipment has already occurred	Provide copies of: (A) Any correspondence you have had with the shipper or importing country's Management Authority concerning the shipment. (B) For wildlife, the validated CITES document and cleared Declaration for Importation or Exportation of Fish or Wildlife (Form 3–177). (C) For plants, the validated CITES document.
(ii) The original CITES document no longer exists	Submit a signed, dated, and notarized statement that: (A) Provides the CITES document number and describes the circumstances that resulted in the loss or destruction of the original CITES document. (B) States whether the shipment has already occurred. (C) Requests a replacement U.S. CITES document.
(iii) An original CITES document exists but has been damaged	Submit the original damaged CITES document and a signed, dated, and notarized statement that: (A) Describes the circumstances that resulted in the CITES document being damaged. (B) States whether the shipment has already occurred. (C) Requests a replacement U.S. CITES document.

(d) *Criteria*. The criteria in this paragraph (d) apply to the issuance and acceptance of U.S and foreign documents. When applying for a U.S. replacement document, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The circumstances for the lost, damaged, stolen, or accidentally destroyed CITES document are reasonable.

(2) If the shipment has already been made, the wildlife or plant was legally exported or re-exported, and the Management Authority of the importing country has indicated it will accept the replacement CITES document.

(e) *U.S. standard conditions*. In addition to the conditions in § 23.56, the following conditions apply:

(1) If the original CITES document is found, you must return it to the U.S. Management Authority.

(2) A CITES document issued for a shipment that has already occurred does not require validation.

(f) *Validation*. For an export or re-export that has not left the United States, follow the procedures in § 23.27. If the shipment has left the United States and is in a foreign country, submit the unvalidated replacement CITES document to the appropriate foreign authorities. We will not validate the replacement CITES document for a shipment that has already been shipped to a foreign country. We do not require validation on replacement documents issued by foreign Management Authorities.

§ 23.53 What are the requirements for obtaining a retrospective CITES document?

(a) *Purpose*. Retrospective CITES documents may be issued and accepted in certain limited situations to authorize an export or re-export after that activity has occurred, but before the shipment is cleared for import.

(b) *U.S. and foreign general provisions*. The following provisions apply to the issuance and acceptance of a retrospective CITES document:

(1) A retrospective document may not be issued for Appendix-I specimens except for certain specimens for personal use as specified in paragraph (d)(7) of this section.

(2) The exporter or re-exporter must notify the Management Authority in the exporting or re-exporting country of the irregularities that have occurred.

(3) A retrospective document may be one of the following:

(i) An amended CITES document where it can be shown that the issuing Management Authority made a technical error that was not prompted by the applicant.

(ii) A newly issued CITES document where it can be shown that the

applicant was misinformed by CITES officials or the circumstances in (d)(7) of this section apply and a shipment has occurred without a document.

(4) Retrospective documents can only be issued after consultation between the Management Authorities in both the exporting or re-exporting country and the importing country, including a thorough investigation of circumstances and agreement between them that criteria in paragraph (d) of this section have been met.

(5) The issuing Management Authority must provide all of the following information on any retrospective CITES document:

(i) A statement that it was issued retrospectively.

(ii) A statement specifying the reason for the issuance.

(iii) In the case of a document issued for personal use, a condition restricting sale of the specimen within 6 months following the import of the specimen.

(6) The issuing Management Authority must send a copy of the retrospective CITES document to the Secretariat.

(7) In general, except when the exporter or re-exporter and importer have demonstrated they were not responsible for the irregularities, any person who has been issued a CITES document in the past will not be eligible to receive a retrospective document.

(c) *U.S. application.* Complete application Form 3–200–58 and submit it to the U.S. Management Authority. In addition, submit one of the following:

(1) For a shipment that occurred under a document containing a technical error, the faulty CITES document.

(2) For a shipment that occurred without a CITES document, a completed application form for the type of activity you conducted (see §§ 23.18 through 23.20).

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign documents. When applying for a U.S. document, you must provide sufficient information for us to find that your activity meets all of the following criteria:

(1) The specimens were exported or re-exported without a CITES document or with a CITES document that contained technical errors as provided in paragraph (d)(6)(ii) of this section.

(2) The specimens were presented to the appropriate official for inspection at the time of import and a request for a retrospective CITES document was made at that time.

(3) The export or re-export and import of the specimens was otherwise in compliance with CITES and the relevant national legislation of the countries involved.

(4) The importing Management Authority has agreed to accept the retrospectively issued CITES document.

(5) The specimens must be Appendix-II or -III wildlife or plants, except as provided in paragraph (d)(7) of this section.

(6) Except as provided in paragraph (d)(7) of this section, the exporter or re-exporter and importer were not responsible for the irregularities that occurred and have demonstrated one of the following:

(i) The ManagementAuthority or officials designated to clear CITES shipments misinformed the exporter or re-exporter or the importer about the CITES requirements. In the United States, this would be an employee of the FWS (for any species) or APHIS or CBP (for plants).

(ii) The Management Authority unintentionally made a technical error that was not prompted by information provided by the applicant when issuing the CITES document.

(7) In the case of specimens for personal use, you must either show that you qualify under paragraph (d)(6) of this section, or that a genuine error was made and that there was no attempt to deceive. The following specimens for personal use may qualify for issuance of a retrospective document:

(i) Personal or household effects.

(ii) Live Appendix-II or -III specimens or live pre-Convention Appendix-I specimens that you own for your personal use, accompanied you, and number no more than two.

(iii) Parts, products, or derivatives of an Appendix-I species that qualify as pre-Convention when the following conditions are met:

(A) You own and possess the specimen for personal use.

(B) You either wore the specimen as clothing or an accessory or took it as part of your personal baggage, which was carried by you or checked as baggage on the same plane, boat, car, or train as you.

(C) The quantity is reasonably necessary or appropriate for the nature of your trip or stay.

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56, the following condition applies: A CITES document issued for a shipment that has already occurred does not require validation.

(f) *Validation.* Submit the original unvalidated retrospective CITES document to the appropriate foreign authority. We will not validate the retrospective CITES document for a shipment that has already been shipped to a foreign country, and we do not require validation on retrospective documents issued by foreign Management Authorities.

§ 23.54 How long is a U.S. or foreign CITES document valid?

(a) *Purpose.* Article VI(2) of the Treaty sets the time period within which an export permit is valid. Validity periods for other CITES documents are prescribed in this section.

(b) *Period of validity.* CITES documents are valid only if presented for import or introduction from the sea within the period of validity (before midnight on the expiration date) noted on the face of the document.

(1) An export permit and re-export certificate will be valid for no longer than 6 months from the issuance date.

(2) An import permit, introduction-from-the-sea certificate, and certificate of origin will be valid for no longer than 12 months from the issuance date.

(3) A traveling-exhibition certificate and certificate of ownership will be valid for no longer than 3 years from the issuance date.

(4) Other CITES documents will state the period of their validity, but no U.S. CITES document will be valid for longer than 3 years from the issuance date.

(c) *Extension of validity.* The validity of a CITES document may not be extended beyond the expiration date on the face of the document, except under limited circumstances for certain timber species as outlined in § 23.73.

§ 23.55 How may I use a CITES specimen after import into the United States?

You may use CITES specimens after import into the United States for the following purposes:

If the species is listed in	Allowed use after import
(a) Appendix I, except for specimens imported with a CITES exemption document listed in paragraph (d) of this section. (b) Appendix II with an annotation for noncommercial purposes where other specimens of that species are treated as if listed in Appendix I. (c) Appendix II and threatened under the ESA, except as provided in a special rule in §§ 17.40 through 17.48 or under a permit granted under §§ 17.32 or 17.52.	The specimen may be used, including a transfer, donation, or exchange, only for noncommercial purposes.
(d) Appendix I, and imported with a CITES exemption document as follows: (1) U.S-issued certificate for personally owned wildlife. (2) Pre-Convention certificate. (3) Export permit or re-export certificate for wildlife from a registered commercial breeding operation. (4) Export permit or re-export certificate for a plant from a registered nursery or under a permit with a source code of "D." (5) U.S.-issued traveling-exhibition certificate. (e) Appendix II, other than those in paragraphs (b) and (c) of this section. (f) Appendix III.	The specimen may be used for any purpose, except if the regulations in this part or other parts of this subchapter or a permit condition allowed the import only for noncommercial purposes, then the import and subsequent use must be only for noncommercial purposes.

§ 23.56 What U.S. CITES document conditions do I need to follow?

(a) *General conditions*. The following general conditions apply to all U.S. CITES documents:

(1) You must comply with the provisions of part 13 of this subchapter as conditions of the document, as well as other applicable regulations in this subchapter, including, but not limited to, any that require permits. You must comply with all applicable local, State, Federal, tribal, and foreign wildlife or plant conservation laws.

(2) For export and re-export of live wildlife and plants, transport conditions must comply with CITES'*Guidelines for transport and preparation for shipment of live wild animals and plants*or, in the case of air transport of live wildlife, with *International Air Transport Association Live Animals Regulations*.

(3) You must return the original CITES document to the issuing office if you do not use it, it expires, or you request renewal or amendment.

(4) When appropriate, a Management Authority may require that you identify Appendix-II and -III wildlife or plants with a mark. All live Appendix-I wildlife must be securely marked or uniquely identified. Such mark or identification must be made in a way that the border official can verify that the specimen and CITES document correspond. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have equipment on hand to read the microchip at the time of import, export, or re-export.

(b) *Standard conditions*. You must comply with the standard conditions provided in this part for specific types of CITES documents.

(c) *Special conditions*. We may place special conditions on a CITES document based on the needs of the species or the proposed activity. You must comply with any special conditions contained in or attached to a CITES document.

Subpart D—Factors Considered in Making Certain Findings

§ 23.60 What factors are considered in making a legal acquisition finding?

(a) *Purpose*. Articles III, IV, and V of the Treaty require a Management Authority to make a legal acquisition finding before issuing export permits and re-export certificates. The Parties have agreed that a legal acquisition finding must also be made before issuing certain CITES exemption documents.

(b) *Types of legal acquisition*. Legal acquisition refers to whether the specimen and its parental stock were:

(1) Obtained in accordance with the provisions of national laws for the protection of wildlife and plants. In the United States, these laws include all applicable local, State, Federal, tribal, and foreign laws; and

(2) If previously traded, traded internationally in accordance with the provisions of CITES.

(c) *How we make our findings*. We make a finding that a specimen was legally acquired in the following way:

(1) The applicant must provide sufficient information (see § 23.34) for us to make a legal acquisition finding.

(2) We make this finding after considering all available information.

(3) The amount of information we need to make the finding is based on our review of general factors described in paragraph (d) of this section and additional specific factors described in paragraphs (e) through (k) of this section.

(4) As necessary, we consult with foreign Management and Scientific Authorities, the CITES Secretariat, State conservation agencies, Tribes, FWS Law Enforcement, APHIS or CBP, and other appropriate experts.

(d) *Risk assessment*. We review the general factors listed in this paragraph and additional specific factors in paragraphs (e) through (k) of this section to assess the level of scrutiny and amount of information we need to make a finding of legal acquisition. We give less scrutiny and require less-detailed information when there is a low risk that specimens to be exported or re-exported were not legally acquired, and give more scrutiny and require more detailed information when the proposed activity poses greater risk. We consider the cumulative risks, recognizing that each aspect of the international trade has a continuum of risk from high to low associated with it as follows:

(1) *Status of the species*: From Appendix I to Appendix III.

(2) *Origin of the specimen*: From wild-collected to born or propagated in a controlled environment to bred in captivity or artificially propagated.

(3) *Source of the propagule used to grow the plant*: From documentation that the plant was grown from a non-exempt seed or seedling to documentation that the plant was grown from an exempt seed or seedling.

(4) *Origin of the species*: From species native to the United States or its bordering countries of Mexico or Canada to nonnative species from other countries.

(5) *Volume of illegal trade*: From high to low occurrence of illegal trade.

(6) *Type of trade*: From commercial to noncommercial.

(7) *Trade by range countries*: From range countries that do not allow commercial export, or allow only limited noncommercial export of the species, to range countries that allow commercial export in high volumes.

(8) *Occurrence of the species in a controlled environment in the United States*: From uncommon to common in a controlled environment in the United States.

(9) *Ability of the species to be bred or propagated readily in a controlled environment*: From no documentation that the species can be bred or propagated readily in a controlled environment to widely accepted information that the species is commonly bred or propagated.

(10) *Genetic status of the specimen*: From a purebred species to a hybrid.

(e) *Captive-bred wildlife or a cultivated plant*. For a specimen that is captive-bred or cultivated, we may consider whether the parentalstock was legally acquired.

(f) *Confiscated specimen*. For a confiscated Appendix-II or -III specimen, we consider whether information shows that the transfer of the confiscated specimen or its offspring met the conditions of the remission decision, legal settlement, or disposal action after forfeiture or abandonment.

(g) *Donated specimen of unknown origin*. For an unsolicited specimen of unknown origin donated to a public institution (see § 10.12 of this subchapter), we consider whether:

(1) The public institution follows standard recordkeeping practices and has made reasonable efforts to obtain supporting information on the origin of the specimen.

(2) The public institution provides sufficient information to show it made a reasonable effort to find a suitable recipient in the United States.

(3) The export will provide a conservation benefit to the species.

(4) No persuasive information exists on illegal transactions involving the specimen.

(5) The export is noncommercial, with no money or barter exchanged except for shipping costs.

(6) The institution has no history of receiving a series of rare and valuable specimens or a large quantity of wildlife or plants of unknown origin.

(h) *Imported previously*. For a specimen that was previously imported into the United States, we consider any reliable, relevant information we receive concerning the validity of a CITES document, regardless of whether the shipment was cleared by FWS, APHIS, or CBP.

(i) *Personal use*. For a wildlife or plant specimen that is being exported or re-exported for personal use by the applicant, we consider whether:

(1) The specimen was acquired in the United States and possessed for strictly personal use.

(2) The number of specimens is reasonably appropriate for the nature of your export or re-export as personal use.

(3) No persuasive evidence exists on illegal transactions involving the specimen.

(j) *Sequential ownership*. For a specimen that was previously possessed by someone other than the applicant, we may consider the history of ownership for a specimen and its parental stock, breeding stock, or cultivated parental stock.

(k) *Wild-collected in the United States*. For a specimen collected from the wild in the United States, we consider the site where the specimen was collected, whether the species is known to occur at that site, the abundance of the species at that site, and, if necessary, whether permission of the appropriate management agency or landowner was obtained to collect the specimen.

§ 23.61 What factors are considered in making a non-detriment finding?

(a) *Purpose*. Articles III and IV of the Treaty require that, before we issue a CITES document, we find that a proposed export or introduction from the sea of Appendix-I or -II specimens is not detrimental to the survival of the species and that a proposed import of an Appendix-I specimen is for purposes that would not be detrimental to the survival of the species.

(b) *Types of detriment*. Detrimental activities, depending on the species, could include, among other things, unsustainable use and any activities that would pose a net harm to the status of the species in the wild. For Appendix-I species, it also includes use or removal from the wild that results in habitat loss or destruction, interference with recovery efforts for a species, or stimulation of further trade.

(c) *General factors*. The applicant must provide sufficient information for us to make a finding of non-detriment. In addition to factors in paragraphs (d) and (e) of this section, we will consider whether:

(1) Biological and management information demonstrates that the proposed activity represents sustainable use.

(2) The removal of the animal or plant from the wild is part of a biologically based sustainable-use management plan that is designed to eliminate over-utilization of the species.

(3) If no sustainable-use management plan has been established, the removal of the animal or plant from the wild would not contribute to the over-utilization of the species, considering both domestic and international uses.

(4) The proposed activity, including the methods used to acquire the specimen, would pose no net harm to the status of the species in the wild.

(5) The proposed activity would not lead to long-term declines that would place the viability of the affected population in question.

(6) The proposed activity would not lead to significant habitat or range loss or restriction.

(d) *Additional factor for Appendix-II species*. In addition to the general factors in paragraph (c) of this section, we will consider whether the intended export of an Appendix-II species would cause a significant risk that the species would qualify for inclusion in Appendix I.

(e) *Additional factors for Appendix-I species*. In addition to the general factors in paragraph (c) of this section, we will consider whether the proposed activity:

(1) Would not cause an increased risk of extinction for either the species as a whole or the population from which the specimen was obtained.

(2) Would not interfere with the recovery of the species.

(3) Would not stimulate additional trade in the species. If the proposed activity does stimulate trade, we will consider whether the anticipated increase in trade would lead to the decline of the species.

(f) *How we make our findings*. We base the non-detriment finding on the best available biological information. We also consider trade information, including trade demand, and other scientific management information. We make a non-detriment finding in the following way:

(1) We consult with the States, Tribes, other Federal agencies, scientists, other experts, and the range countries of the species.

(2) We consult with the Secretariat and other Parties to monitor the level of trade that is occurring in the species.

(3) Based on the factors in paragraphs (c) through (e) of this section, we evaluate the biological impact of the proposed activity.

(4) In cases where insufficient information is available or the factors above are not satisfactorily addressed, we take precautionary measures and

would be unable to make the required finding of non-detriment.

(g) *Risk assessment*. We review the status of the species in the wild and the degree of risk the proposed activity poses to the species to determine the level of scrutiny needed to make a finding. We give greater scrutiny and require moredetailed information for activities that pose a greater risk to a species in the wild. We consider the cumulative risks, recognizing that each aspect of international trade has a continuum of risk (from high to low) associated with it as follows:

(1) *Status of the species*: From Appendix I to Appendix II.

(2) *Origin of the specimen*: From wild-collected to born or propagated in a controlled environment to bred in captivity or artificially propagated.

(3) *Source of the propagule used to grow the plant*: From documentation that the plant was grown from a non-exempt seed or seedling to documentation that the plant was grown from an exempt seed or seedling.

(4) *Origin of the species*: From native species to nonnative species.

(5) *Volume of legal trade*: From high to low occurrence of legal trade.

(6) *Volume of illegal trade*: From high to low occurrence of illegal trade.

(7) *Type of trade*: From commercial to noncommercial.

(8) *Genetic status of the specimen*: From a purebred species to a hybrid.

(9) *Risk of disease transmission*: From high to limited risk of disease transmission.

(10) *Basis for listing*: From listed under Article II(1) or II(2)(a) of the Treaty to listed under Article II(2)(b).

(h) *Quotas for Appendix-I species*. When an export quota has been set by the CoP for an Appendix-I species, we will consider the scientific and management basis of the quota together with the best available biological information when we make our non-detriment finding. We will contact the Scientific and Management Authorities of the exporting country for further information if needed.

§ 23.62 What factors are considered in making a finding of not for primarily commercial purposes?

(a) *Purpose*. Under Article III(3(c)) and (5(c)) of the Treaty, an import permit or an introduction-from-the-sea certificate for Appendix-I species can be issued only if the Management Authority is satisfied that the specimen is not to be used for primarily commercial purposes. Trade in Appendix-I species must be subject to particularly strict regulation and authorized only in exceptional circumstances.

(b) *How we make our findings*. We must find that the intended use of the Appendix-I specimen is not for primarily commercial purposes before we can issue a CITES document.

(1) We will make this decision on a case-by-case basis considering all available information.

(2) The applicant must provide sufficient information to satisfy us that the intended use is not for primarily commercial purposes.

(3) The definitions of ''commercial'' and ''primarily commercial purposes'' in § 23.5 apply.

(4) We will look at all aspects of the intended use of the specimen. If the noncommercial aspects do not clearly predominate, we will consider the import or introduction from the sea to be for primarily commercial purposes.

(5) While the nature of the transaction between the owner in the country of export and the recipient in the country of import or introduction from the sea may have some commercial aspects, such as the exchange of money to cover the costs of shipment and care of specimens during transport, it is the intended use of the specimen, including the purpose of the export, that must not be for primarily commercial purposes.

(6) We will conduct an assessment of factors listed in paragraph (d) of this section. For activities involving an anticipated measurable increase in revenue and other economic value associated with the intended use, we will conduct an analysis as described in paragraph (e) of this section.

(7) All net profits generated in the United States from activities associated with the import of an Appendix-I species must be used for conservation of that species.

(c) *Examples*. The following are examples of types of transactions in which the noncommercial aspects of the intended use of the specimen may predominate depending on the facts of each situation. The discussions of each example provide further guidance in assessing the actual degree of commerciality on a case-by-case basis. These examples outline circumstances commonly encountered and do not cover all situations where import or introduction from the sea could be found to be not for primarily commercial purposes.

(1) *Personal use*. Import or introduction from the sea of an Appendix-I specimen for personal use generally is considered to be not for primarily commercial purposes. An example is the import of a personal sport-hunted trophy by the person who hunted the wildlife for display in his or her own home.

(2) *Scientific purposes*. The import or introduction from the sea of an Appendix-I specimen by a scientist or scientific institution may be permitted in situations where resale, commercial exchange, or exhibit of the specimen for economic benefit is not the primary intended use.

(3) *Conservation, education, or training*. Generally an Appendix-I specimen may be imported or introduced from the sea by government agencies or nonprofit institutions for purposes of conservation, education, or training. For example, a specimen could be imported or introduced from the sea primarily to train customs staff in effective CITES control, such as for identification of certain types of specimens.

(4) *Biomedical industry*. Import or introduction from the sea of an Appendix-I specimen by an institution or company in the biomedical industry is initially presumed to be commercial since specimens are typically imported or introduced from the sea to develop and sell products that promote public health for profit. However, if theimporter clearly shows that the sale of products is only incidental to public health research and not for the primary purpose of economic benefit or profit, then such an import or introduction from the sea could be considered as scientific research under paragraph (c)(2) of this section if the principles of paragraph (b) of this section are met.

(5) *Captive-breeding or artificial propagation programs*. The import of an Appendix-I specimen for purposes of establishing a commercial operation for breeding or artificial propagation is considered to be for primarily commercial purposes. As a general rule, import or introduction from the sea of an Appendix-I specimen for a captive-breeding or artificial propagation program must have as a priority the long-term protection and recovery of the species in the wild. The captive-breeding or artificial propagation program must be part of a program aimed at the recovery of the species in the wild and be undertaken with the support of a country within the species' native range. Any profit gained must be used to support this recovery program. If a captive-breeding or artificial propagation operation plans to sell surplus specimens to help offset the costs of its program, import or introduction from the sea would be allowed only if any profit would be used to support the captive-breeding or artificial propagation program to the benefit of the Appendix-I species, not for the personal economic benefit of a private individual or share-holder.

(6) *Professional dealers*. Import or introduction from the sea by a professional dealer who states a general intention to eventually sell the specimen or its offspring to an undetermined recipient would be considered to be for primarily commercial purposes. However, import or introduction from the sea through a professional dealer by a qualified applicant may be acceptable if the ultimate intended use would be for one of the purposes set out in paragraphs (c)(2), (3), and (5) of this section and where a binding contract, conditioned on the issuing of permits, is in place.

(d) *Risk assessment*. We review the factors listed in this paragraph (d) to assess the level of scrutiny and amount of information we need to make a finding of whether the intended use of the specimen is not for primarily commercial purposes. We give less scrutiny and require less detailed information when the import or introduction from the sea poses a low risk of being primarily commercial, and give more scrutiny and require more detailed information when the proposed activity poses greater risk. We consider the cumulative risks, recognizing that each aspect of the international trade has a continuum of risk from high to low associated with it as follows:

(1) *Type of importer*: From for-profit entity to private individual to nonprofit entity.

(2) *Ability of the proposed uses to generate revenue*: From the ability to generate measurable increases in revenue or other economic value to no anticipated increases in revenue or other economic value.

(3) *Appeal of the species*: From high public appeal to low public appeal.

(4) *Occurrence of the species in the United States*: From uncommon to common in a controlled environment in the United States.

(5) *Intended use of offspring*: From commercial to noncommercial.

(e) *Analysis of anticipated revenues and other economic value*. We will analyze revenues and other economic value anticipated to result from the use of the specimen for activities with a high risk of being primarily commercial.

(1) We will examine the proposed use of any net profits generated in the United States. We consider net profit to include all funds or other valuable considerations (including enhanced value of common stock shares) received or attained by you or those affiliated with you as a result of the import or introduction from the sea, to the extent thatsuch funds or other valuable considerations exceed the reasonable expenses that are properly attributable to the proposed activity.

(2) We will consider any conservation project to be funded and, if the species was or is to be taken from the wild, how the project benefits the species in its native range, including agreements, timeframes for accomplishing tasks, and anticipated benefits to the species.

(3) We will consider any plans to monitor a proposed conservation project, including expenditure of funds or completion of tasks.

(4) In rare cases involving unusually high net profits, we will require the applicant to provide a detailed analysis of expected revenue (both direct and indirect) and expenses to show anticipated net profit, and a statement from a licensed, independent certified public accountant that the internal accounting system is sufficient to account for and track funds generated by the proposed activities.

§ 23.63 What factors are considered in making a finding that an animal is bred in captivity?

(a) *Purpose*. Article VII(4) and (5) of the Treaty provide exemptions that allow for the special treatment of wildlife that was bred in captivity (see §§ 23.41 and 23.46).

(b) *Definitions*. The following terms apply when determining whether specimens qualify as ''bred in captivity'':

(1) A *controlled environment* means one that is actively manipulated for the purpose of producing specimens of a particular species; that has boundaries designed to prevent specimens, including eggs or gametes, from entering or leaving the controlled environment; and has general characteristics that may include artificial housing, waste removal, provision of veterinary care, protection from predators, and artificially supplied food.

(2) *Breeding stock* means an ensemble of captive wildlife used for reproduction.

(c) *Bred-in-captivity criteria*. For a specimen to qualify as bred in captivity, we must be satisfied that all the following criteria are met:

(1) If reproduction is sexual, the specimen was born to parents that either mated or transferred gametes in a controlled environment.

(2) If reproduction is asexual, the parent was in a controlled environment when development of the offspring began.

(3) The breeding stock meets all of the following criteria:

(i) Was established in accordance with the provisions of CITES and relevant national laws.

(ii) Was established in a manner not detrimental to the survival of the species in the wild.

(iii) Is maintained with only occasional introduction of wild specimens as provided in paragraph (d) of this section.

(iv) Has consistently produced offspring of second or subsequent generations in a controlled environment, or is managed in a way that has been demonstrated to be capable of reliably producing second-generation offspring and has produced first-generation offspring.

(d) *Addition of wild specimens*. A very limited number of wild specimens (including eggs or gametes) may be introduced into a breeding stock if all of the following conditions are met (for Appendix-I specimens see also § 23.46(b)(12)):

(1) The specimens were acquired in accordance with the provisions of CITES and relevant national laws.

(2) The specimens were acquired in a manner not detrimental to the survival of the species in the wild.

(3) The specimens were added either to prevent or alleviate deleterious inbreeding, with the number of specimens added as determined by the need for new genetic material, or to dispose of confiscated animals.

§ 23.64 What factors are considered in making a finding that a plant is artificially propagated?

(a) *Purpose*. Article VII(4) and (5) of the Treaty provide exemptions that allow for special treatment of plants that were artificially propagated (see §§ 23.40 and 23.47).

(b) *Definitions*. The following terms apply when determining whether specimens qualify as ''artificially propagated'':

(1) *Controlled conditions* means a nonnatural environment that is intensively manipulated by human intervention for the purpose of plant production. General characteristics of controlled conditions may include, but are not limited to, tillage, fertilization, weed and pest control, irrigation, or nursery operations such as potting, bedding, or protection from weather.

(2) *Cultivated parental stock* means the ensemble of plants grown under controlled conditions that are used for reproduction.

(c) *Artificially propagated criteria*. Except as provided in paragraphs (f) and (g) of this section, for a plant specimen to qualify as artificially propagated, we must be satisfied that the plant specimen was grown under controlled conditions from a seed, cutting, division, callus tissue, other plant

tissue, spore, or other propagule that either is exempt from the provisions of CITES or has been derived from cultivated parental stock. The cultivated parental stock must meet all of the following criteria:

(1) Was established in accordance with the provisions of CITES and relevant national laws.

(2) Was established in a manner not detrimental to the survival of the species in the wild.

(3) Is maintained in sufficient quantities for propagation so as to minimize or eliminate the need for augmentation from the wild, with such augmentation occurring only as an exception and limited to the amount necessary to maintain the vigor and productivity of the cultivated parental stock.

(d) *Cutting or division*. A plant grown from a cutting or division is considered to be artificially propagated only if the traded specimen does not contain any material collected from the wild.

(e) *Grafted plant*. A grafted plant is artificially propagated only when both the rootstock and the material grafted to it have been taken from specimens that were artificially propagated in accordance with paragraph (c) of this section. A grafted specimen that consists of taxa from different Appendices is treated as a specimen of the taxon listed in the more restrictive Appendix.

(f) *Timber*. Timber taken from trees planted and grown in a monospecific plantation is considered artificially propagated if the seeds or other propagules from which the trees are grown were legally acquired and obtained in a non-detrimental manner.

(g) *Exception for certain plant specimens grown from wild-collected seeds or spores*. Plant specimens grown from wild-collected seeds or spores may be considered artificially propagated only when all of the following conditions have been met:

(1) Establishment of a cultivated parental stock for the taxon presents significant difficulties because specimens take a long time to reach reproductive age.

(2) The seeds or spores are collected from the wild and grown under controlled conditions within a range country, which must also be the country of origin of the seeds or spores.

(3) The Management Authority of the range country has determined that the collection of seeds or spores was legal and consistent with relevant national laws for the protection and conservation of the species.

(4) The Scientific Authority of the range country has determined that collection of the seeds or spores was not detrimental to the survival of the species in the wild, and allowing trade in such specimens has a positive effect on the conservation of wild populations. In making these determinations, all of the following conditions must be met:

(i) The collection of seeds or spores for this purpose must belimited in such a manner as to allow regeneration of the wild population.

(ii) A portion of the plants produced must be used to establish plantations to serve as cultivated parental stock in the future and become an additional source of seeds or spores and thus reduce or eliminate the need to collect seeds from the wild.

(iii) A portion of the plants produced must be used for replanting in the wild, to enhance recovery of existing populations or to re-establish populations that have been extirpated.

(5) Operations propagating Appendix-I species for commercial purposes must be registered with the CITES Secretariat in accordance with the Guidelines for the registration of nurseries exporting artificially propagated specimens of Appendix-I species.

§ 23.65 What factors are considered in making a finding that an applicant is suitably equipped to house and care for a live specimen?

(a) *Purpose*. Under Article III(3)(b) and (5)(b) of the Treaty, an import permit or introduction-from-the-sea certificate for live Appendix-I specimens can be issued only if we are satisfied that the recipients are suitably equipped to house and care for them.

(b) *General principles*. We will follow these general principles in making a decision on whether an applicant has facilities that would provide proper housing to maintain the specimens for the intended purpose and the expertise to provide proper care and husbandry or horticultural practices.

(1) All persons who would be receiving a specimen must be identified in an application and their facilities approved by us, including persons who are likely to receive a specimen within 1 year after it arrives in the United States.

(2) The applicant must provide sufficient information for us to make a finding, including, but not limited to, a description of the facility, photographs, or construction plans, and resumes of the recipient or staff who will care for the specimen.

(3) We use the best available information on the requirements of the species in making a decision and will consult with experts and other Federal and State agencies, as necessary and appropriate.

(4) The degree of scrutiny that we give an application is based on the biological and husbandry or horticultural needs of the species.

(c) *Specific factors considered for wildlife*. In addition to the general provisions in paragraph (e) of this section, we consider the following factors in evaluating suitable housing and care for wildlife:

(1) Enclosures constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns.

(2) Appropriate forms of environmental enrichment, such as nesting material, perches, climbing apparatus, ground substrate, or other species-specific materials or objects.

(3) If the wildlife is on public display, an off-exhibit area, consisting of indoor and outdoor accommodations, as appropriate, that can house the wildlife on a long-term basis if necessary.

(4) Provision of water and nutritious food of a nature and in a way that are appropriate for the species.

(5) Staff who are trained and experienced in providing proper daily care and maintenance for the species being imported or introduced from the sea, or for a closely related species.

(6) Readily available veterinary care or veterinary staff experienced with the species or a closely related species, including emergency care.

(d) *Specific factors considered for plants*. In addition to the general provisions in paragraph (e) of the section, we consider the following factors in evaluating suitable housing and care for plants:

(1) Sufficient space, appropriate lighting, and other environmental conditions that will ensure proper growth.

(2) Ability to provide appropriate culture, such as water, fertilizer, and pest and disease control.

(3) Staff with experience with the imported species or related species with similar horticultural requirements.

(e) *General factors considered for wildlife and plants*. In addition to the specific provisions in paragraphs (c) or (d) of this section, we will consider the following factors in evaluating suitable housing and care for wildlife and plants:

(1) Adequate enclosures or holding areas to prevent escape or unplanned exchange of genetic material with specimens of the same or different species outside the facility.

(2) Appropriate security to prevent theft of specimens and measures taken to rectify any previous theft or security problem.

(3) A reasonable survival rate of specimens of the same species or, alternatively, closely related species atthe facility, mortalities for the previous 3 years, significant injuries to wildlife or damage to plants, occurrence of significant disease outbreaks during the previous 3 years, and measures taken to prevent similar mortalities, injuries, damage, or diseases. Significant injuries, damage, or disease outbreaks are those that are permanently debilitating or re-occurring.

(4) Sufficient funding on a long-term basis to cover the cost of maintaining the facility and the specimens imported.

(f) *Incomplete facilities or insufficient staff*. For applications submitted to us before the facilities to hold the specimen are completed or the staff is identified or properly trained, we will:

(1) Review all available information, including construction plans or intended staffing, and make a finding based on this information.

(2) Place a condition on any permit that the import cannot occur until the facility has been completed or the staff hired and trained, and approved by us.

Subpart E—International Trade in Certain Specimens

§ 23.68 How can I trade internationally in roots of American ginseng?

(a) *U.S. and foreign general provisions*. Whole plants and roots (whole, sliced, and parts, excluding manufactured parts, products, and derivatives, such as powders, pills, extracts, tonics, teas, and confectionery) of American ginseng (*Panax quinquefolius*), whether wild or artificially propagated, are included in Appendix II. Cultivated American ginseng that does not meet the requirements of artificially propagated will be considered wild for export and re-export purposes. The import, export, or re-export of ginseng roots must meet the requirements of this section and other requirements of this part (see subparts B and C for prohibitions and application procedures). For specimens that were harvested from a State or Tribe without an approved CITES export program, see § 23.36 for export permits and § 23.37 for re-export certificates.

(b) *Export approval of State and tribal programs*. States and Tribes set up and maintain ginseng management and harvest programs designed to monitor and protect American ginseng from over-harvest. When a State or Tribe with a management program provides us with the necessary information, we make programmatic findings and have specific requirements that allow export under CITES. For wild ginseng, a State or Tribe must provide sufficient information for us to determine that its management program and harvest controls are appropriate to ensure that ginseng harvested within its jurisdiction is legally acquired and that export will not be detrimental to the survival of the species in the wild. For artificially propagated ginseng, a State or Tribe must provide sufficient information for us to determine that ginseng grown within its jurisdiction meets the definition of artificially propagated and the State or Tribe must have procedures in place to minimize the risk that the roots of wild-collected plants would be claimed as artificially propagated.

(1) A State or Tribe seeking initial CITES export program approval for wild or artificially propagated American ginseng must submit the following information on the adoption and implementation of regulatory measures to the U.S. Management Authority:

(i) Laws or regulations mandating licensing or registration of persons buying and selling ginseng in that State or on tribal lands.

(ii) A requirement that ginseng dealers maintain records and provide copies of those records to the appropriate State or tribal management agency upon request. Dealer records must contain: the name and address of the ginseng seller, date of transaction, whether the ginseng is wild or artificially propagated and dried or green at time of transaction, weight of roots, State or Tribe of origin of roots, and identification numbers of the State or tribal certificates used to ship ginseng from the State or Tribe of origin.

(iii) A requirement that State or tribal personnel will inspect roots, ensure legal harvest, and have the ability to determine the age of roots of all wild-collected ginseng harvested in the State or on tribal lands. State or tribal personnel may accept a declaration statement by the licensed or registered dealer or grower that the ginseng roots are artificially propagated.

(iv) A requirement that State or tribal personnel will weigh ginseng roots unsold by March 31 of the year after harvest and give a weight receipt to the owner of the roots. Future export certification of this stock must be issued against the weight receipt.

(v) A requirement that State or tribal personnel will issue certificates for wild and artificially propagated ginseng. These certificates must contain at a minimum:

(A) State of origin.

(B) Serial number of certificate.

(C) Dealer's State or tribal license or registration number.

(D) Dealer's shipment number for that harvest season.

(E) Year of harvest of ginseng being certified.

(F) Designation as wild or artificially propagated.

(G) Designation as driedor fresh (green) roots.

(H) Weight of roots.

(I) Statement of State or tribal certifying official verifying that the ginseng was obtained in that State or on those tribal lands in accordance with all relevant laws for that harvest year.

(J) Name and title of State or tribal certifying official.

(2) In addition, a State or Tribe seeking initial CITES export program approval for wild American ginseng must submit the following information to the U.S. Management Authority:

(i) An assessment of the condition of the population and trends, including a description of the types of information on which the assessment is based, such as an analysis of population demographics; population models; or analysis of past harvest levels or indices of abundance independent of harvest information, such as field surveys.

(ii) Historic, present, and potential distribution of wild ginseng on a county-by-county basis.

(iii) Phenology of ginseng, including flowering and fruiting periods.

(iv) Habitat evaluation.

(v) If available, copies of any ginseng management or monitoring plans or other relevant reports that the State or Tribe has prepared as part of its existing management program.

(3) A State or Tribe with an approved CITES export program must complete Form 3–200–61 and submit it to the U.S. Management Authority by May 31 of each year to provide information on the previous harvest season.

(c) *U.S. application process*. Application forms and a list of States and Tribes with approved ginseng programs can be obtained from our website or by contacting us (see § 23.7).

(1) To export wild or artificially propagated ginseng harvested under an approved State or tribal program, complete Form 3–200–34 or Form 3-200-74 for additional single-use permits under an annual program file.

(2) To export wild ginseng harvested from a State or Tribe that does not have an approved program, complete Form 3–200–32. To export artificially propagated ginseng from a State or Tribe that does not have an approved program, complete Form 3–200–33.

(3) To re-export ginseng, complete Form 3–200–32.

(4) For information on issuance criteria for CITES documents, see § 23.36 for export permits, § 23.37 for re-export certificates, and § 23.40 for certificates for artificially propagated plants.

(d) *Conditions for export.* Upon export, roots must be accompanied by a State or tribal certificate containing the information specified in paragraph (b)(1)(v) of this section.

§ 23.69 How can I trade internationally in fur skins and fur skin products of bobcat, river otter, Canada lynx, gray wolf, and brown bear?

(a) *U.S. and foreign general provisions.* For purposes of this section, CITES furbearers means bobcat (*Lynx rufus*), river otter (*Lontra canadensis*), and Canada lynx (*Lynx canadensis*), and the Alaskan populations of gray wolf (*Canis lupus*), and brown bear (*Ursus arctos*). These species are included in Appendix II based on Article II(2)(b) of the Treaty (see § 23.89). The import, export, or re-export of fur skins and fur skin products must meet the requirements of this section and the other requirements of this part (see subparts B and C for prohibitions and application procedures). For specimens that were harvested from a State or Tribe without an approved CITES export program, see § 23.36 for export permits and §23.37 for re-export certificates.

(b) *Export approval of State and tribal programs.* States and Tribes set up and maintain management and harvest programs designed to monitor and protect CITES furbearers from over-harvest. When a State or Tribe with a management program provides us with the necessary information, we make programmatic findings and have specific requirements that allow export under CITES. A State or Tribe must provide sufficient information for us to determine that its management program and harvest controls are appropriate to ensure that CITES furbearers harvested within its jurisdiction are legally acquired and that export will not be detrimental to the survival of the species in the wild.

(1) A State or Tribe seeking initial CITES export program approval must submit the following information to the U.S. Management Authority, except as provided in paragraph (b)(2) of this section:

(i) An assessment of the condition of the population and a description of the types of information on which the assessment is based, such as an analysis of carcass demographics, population models, analysis of past harvest levels as a function of fur prices or trapper effort, or indices of abundance independent of harvest information, such as scent station surveys, archer surveys, camera traps, track or scat surveys, or road kill counts.

(ii) Current harvest control measures, including laws regulating harvest seasons and methods.

(iii) Total allowable harvest of the species.

(iv) Distribution of harvest.

(v) Indication of how frequently harvest levels are evaluated.

(vi) Tagging or marking requirements for fur skins.

(vii) Habitat evaluation.

(viii) If available, copies of any furbearer management plans or other relevant reports that the State or Tribe has prepared as part of its existing management program.

(2) If the U.S. Scientific Authority has made a range-wide non-detriment finding for a species, a State or Tribe seeking initial approval for a CITES export program for that species need only submit the information in (b)(1)(ii) and (vi) of this section.

(3) A State or Tribe with an approved CITES export program must submit a CITES furbearer activity report to the U.S. Management Authority by October 31 of each year that provides information as to whether or not the population status or management of the species has changed within the State or tribal lands. This report may reference information provided in previous years if the information has not changed. Except as provided in paragraph (b)(4) of this section, a furbearer activity report should include, at a minimum, the following:

(i) For each species, the number of specimens taken and the number of animals tagged, if different.

(ii) An assessment of the condition of the population, including trends, and a description of the types of information on which the assessment is based. If population levels are decreasing, the activity report should include the State or Tribe's professional assessment of the reason for the decline and any steps being taken to address it.

(iii) Information on, and a copy of, any changesin laws or regulations affecting these species.

(iv) If available, copies of relevant reports that the State or Tribe has prepared during the year in question as part of its existing management programs for CITES furbearers.

(4) When the U.S. Scientific Authority has made a range-wide non-detriment finding for a species, the annual furbearer activity report from a State or Tribe with an approved export program for that species should include, at a minimum, a statement indicating whether or not the status of the species has changed and the information in paragraph (b)(3)(iii) and (iv) of this section. Range-wide non-detriment findings will be re-evaluated at least every 5 years, or sooner if information indicates that there has been a change in the status or management of the species that might lead to different treatment of the species. When a range-wide non-detriment finding is re-evaluated, States and Tribes with an approved export program for the species must submit information that allows us to determine whether our finding remains valid.

(c) *CITES tags.* Unless an alternative method has been approved, each CITES fur skin to be exported or re-exported must have a U.S. CITES tag permanently attached.

(1) The tag must be inserted through the skin and permanently locked in place using the locking mechanism of the tag.

(2) The legend on the CITES tag must include the US-CITES logo, an abbreviation for the State or Tribe of harvest, a standard species code assigned by the Management Authority, and a unique serial number.

(3) Fur skins with broken, cut, or missing tags may not be exported. Replacement tags must be obtained before the furs are presented for export or re-export. To obtain a replacement tag, either from the State or Tribe that issued the original tag or from us, you must provide information to show that the fur was legally acquired.

(i) When a tag is broken, cut, or missing, you may contact the State or Tribe of harvest for a replacement tag. If the State or Tribe cannot replace it, you may apply to FWS Law Enforcement for a replacement tag. If the tag is broken or cut, you must give us the tag. If the tag is missing, you must provide details concerning how the tag was lost. If we are satisfied that the fur was legally acquired, we will provide a CITES replacement tag.

(ii) A replacement tag must meet all of the requirements in paragraph (c) of this section, except the legend will include only the US-CITES logo, FWS-REPL, and a unique serial number.

(4) Tags are not required on fur skin products.

(d) *Documentation requirements.* The U.S. CITES export permit or an annex attached to the permit must contain all information that is given on the tag.

(e) *U.S. application process.* Application forms and a list of States and Tribes with approved furbearer programs can be obtained from our website or by contacting us (see § 23.7).

(1) To export fur skins taken under an approved State or tribal program, complete Form 3–200–26 and submit it to either FWS Law Enforcement or the U.S. Management Authority.

(2) To export fur skins that were not harvested under an approved program, complete Form 3–200–27 and submit it to the U.S. Management Authority.

(3) To re-export fur skins, complete Form 3-200-73 and submit it either to FWS Law Enforcement or the U.S. Management Authority.

(4) For information on issuance criteria for CITES documents, see § 23.36 for export permits and § 23.37 for re-export certificates.

(f) *Conditions for export*. Upon export, each fur skin, other than a fur skin product, must be clearly identified in accordance with paragraph (c) of this section.

§ 23.70 How can I trade internationally in American alligator and other crocodilian skins, parts, and products?

(a) *U.S. and foreign general provisions*. For the purposes of this section, *crocodilian* means all species of alligator, caiman, crocodile, and gavial of the order Crocodylia. The import, export, or re-export of any crocodilian skins, parts, or products must meet the requirements of this section and the other requirements of this part (see subparts B and C for prohibitions and application procedures). For American alligator (*Alligator mississippiensis*) specimens harvested from a State or Tribe without an approved CITES export program, see § 23.36 for export permits and §23.37 for re-export certificates.

(b) *Definitions*. Terms used in this section are defined as follows:

(1) *Crocodilian skins* means whole or partial skins, flanks, chalecos, and bellies (including those that are salted, crusted, tanned, partially tanned, or otherwise processed), including skins of sport-hunted trophies.

(2) *Crocodilian parts* means body parts with or without skin attached (including tails, throats, feet, meat, skulls, and other parts) and small cut skin pieces.

(c) *Export approval of State and tribal programs for American alligator*. States and Tribes set up and maintain management and harvest programs designed to monitor and protect American alligators from over-harvest. When a State or Tribe with a management program provides us with the necessary information, we make programmatic findings and have specific requirements that allow export under CITES. A State or Tribe must provide sufficient information for us to determine that its management program and harvest controls are appropriate to ensure that alligators harvested within its jurisdiction are legally acquired and that the export will not be detrimental to the survival of the species in the wild.

(1) A State or Tribe seeking initial CITES export program approval must submit the following to the U.S. Management Authority:

(i) An assessment of the condition of the wild population and a description of the types of information on which the assessment is based, such as an analysis of carcass demographics, population models, analysis of past harvest levels as a function of skin prices or harvester effort, or indices of abundance independent of harvest information, such as nest surveys, spotlighting surveys, or nuisance complaints.

(ii) Current harvest control measures, including laws regulating harvest seasons and methods.

(iii) Total allowable harvest of the species.

(iv) Distribution of harvest.

(v) Indication of how frequently harvest levels are evaluated.

(vi) Tagging or marking requirements for skins and parts.

(vii) Habitat evaluation.

(viii) Information on nuisance alligator management programs.

(ix) Information on alligator farming programs, including whether collecting and rearing of eggs or hatchlings is allowed, what factors are used to set harvest levels, and whether any alligators are returned to the wild.

(x) If available, copies of any alligator management plans or other relevant reports for American alligator that the State or Tribe has prepared as part of its existing management program.

(2) A State or Tribe with an approved CITES export program must submit an American alligator activity report to the U.S. Management Authority by July 1 of each year to provide information regarding harvests during the previous year. This report may reference information provided in previous years if the information has not changed. An American alligator activity report, at a minimum, should include the following:

(i) The total number of skins from wild or farmed alligators that were tagged by the State or Tribe.

(ii) An assessment of the status of the alligator population with an indication of whether the population is stable, increasing, or decreasing, and at what rate (if known). If population levels are decreasing,activity reports should include the State or Tribe's professional assessment of the reason for the decline and any steps being taken to address it.

(iii) For wild alligators, information on harvest, including harvest of nuisance alligators, methods used to determine harvest levels, demographics of the harvest, and methods used to determine the total number and population trends of alligators in the wild.

(iv) For farmed alligators, information on whether collecting and rearing of eggs or hatchlings is allowed, what factors are used to set harvest levels, and whether any alligators are returned to the wild.

(v) Information on, and a copy of, any changes in laws or regulations affecting the American alligator.

(vi) If available, copies of relevant reports that the State or Tribe has prepared during the reporting period as part of its existing management program for the American alligator.

(3) We provide CITES export tags to States and Tribes with approved CITES export programs. American alligator skins and parts must meet the marking and tagging requirements of paragraphs (d), (e), and (f) of this section.

(d) *Tagging of crocodilian skins*. You may import, export, or re-export any crocodilian skin only if a non-reusable tag is inserted though the skin and locked in place using the locking mechanism of the tag. A mounted sport-hunted trophy must be accompanied by the tag from the skin used to make the mount.

(1) Except as provided for a replacement tag in paragraph (d)(3)(ii) of this section, the tag must:

(i) Be self-locking, heat resistant, and inert to chemical and mechanical processes.

(ii) Be permanently stamped with the two-letter ISO code for the country of origin, a unique serial number, a standardized species code (available on our website; see § 23.7), and the year of production or harvest. For American alligator, the export tags include the US-CITES logo, an abbreviation for the State or Tribe of harvest, a standard species code (MIS = *Alligator mississippiensis*), the year of taking, and a unique serial number.

(iii) If the year of production or harvest and serial number appear next to each other on a tag, the information should be separated by a hyphen.

(2) Skins and flanks must be individually tagged, and chalecos must have a tag attached to each flank.

(3) Skins with broken, cut, or missing tags may not be exported. Replacement tags must be obtained before the skins are presented for import, export, or re-export. To obtain a replacement tag,

either from the State or Tribe of harvest (for American alligator) or from us, you must provide information to show that the skin was legally acquired.

(i) In the United States, when an American alligator tag is broken, cut, or missing, you may contact the State or Tribe of harvest for a replacement tag. If the State or Tribe cannot replace it, you may apply to FWS Law Enforcement for a replacement tag. To obtain replacement tags for crocodilian skins other than American alligator in the United States, contact FWS Law Enforcement. If the tag is broken or cut, you must give us the tag. If the tag is missing, you must provide details concerning how the tag was lost. If we are satisfied that the skin was legally acquired, we will provide a CITES replacement tag.

(ii) A replacement tag must meet all of the requirements in paragraph (d)(1) of this section except that the species code and year of production or harvest will not be required, and for re-exports the country of re-export must be shown in place of the country of origin. In the United States, the legend will include the US-CITES logo, FWS-REPL, and a unique serial number.

(e) *Meat and skulls*. Except for American alligator, you may import, export, or re-export crocodilian meat and skulls without tags or markings. American alligator meat and skulls may be imported, exported, or re-exported if packaged and marked or tagged in accordance withState or tribal laws as follows:

(1) Meat from legally harvested and tagged alligators must be packed in permanently sealed containers and labeled as required by State or tribal laws or regulations. Bulk meat containers must be marked with any required State or tribal parts tag or bulk meat tag permanently attached and indicating, at a minimum, State or Tribe of origin, year of take, species, original U.S. CITES tag number for the corresponding skin, weight of meat in the container, and identification of State-licensed processor or packer.

(2) Each American alligator skull must be marked as required by State or tribal law or regulation. This marking must include, at a minimum, reference to the corresponding U.S. CITES tag number on the skin.

(f) *Tagging or labeling of crocodilian parts other than meat and skulls*. You may import, export, or re-export crocodilian parts other than meat and skulls when the following conditions are met:

(1) Parts must be packed in transparent sealed containers.

(2) Containers must be clearly marked with a non-reusable parts tag or label that includes all of the information in paragraph (d)(1)(ii) of this section and a description of the contents, the total weight (contents and container), and the number of the CITES document.

(3) Tags are not required on crocodilian products.

(4) Tags are not required on scientific specimens except as required in paragraphs (d) and (e) of this section.

(g) *Documentation requirements*. The CITES document or an annex attached to the document must contain all information that is given on the tag or label.

(h) *U.S. application process*. Application forms and a list of States and Tribes with approved American alligator programs can be obtained from our website or by contacting us (see § 23.7).

(1) To export American alligator specimens taken under an approved State or tribal program, complete Form 3–200–26 and submit it to either FWS Law Enforcement or the U.S. Management Authority.

(2) To export American alligator specimens that are not from an approved program, complete Form 3–200–27 and submit it to the U.S. Management Authority.

(3) For information on issuance criteria for CITES documents, see § 23.36 for export permits and § 23.37 for re-export certificates.

(i) *Conditions for import, export, or re-export*. Upon import, export, or re-export, each crocodilian specimen must meet the applicable tagging requirements in paragraphs (d), (e), and (f) of this section.

§ 23.71 How can I trade internationally in sturgeon caviar?

(a) *U.S. and foreign general provisions*. For the purposes of this section, *sturgeon caviar* means the processed roe of any species of sturgeon, including paddlefish (Order Acipenseriformes). The import, export, or re-export of sturgeon caviar must meet the requirements of this section and the other requirements of this part (see subparts B and C for prohibitions and application procedures).

(b) *Labeling*. You may import, export, or re-export sturgeon caviar only if labels are affixed to containers prior to export or re-export in accordance with this paragraph.

(1) The following definitions apply to caviar labeling:

(i) *Non-reusable label* means any label or mark that cannot be removed without being damaged or transferred to another container.

(ii) *Primary container* means any container in direct contact with the caviar.

(iii) *Secondary container* means the receptacle into which primary containers are placed.

(iv) *Processing plant* means a facility in the country of origin responsible for the first packaging of caviar into a primary container.

(v) *Repackaging plant* means a facility responsible for receiving and repackaging caviar into new primary containers.

(vi) *Lot identification number* means a number that corresponds to information related to the caviar tracking system used by the processing plant or repackaging plant.

(2) The caviar-processing plant in the country of origin must affix a non-reusable label on the primary container that includes all of the following information:

(i) Standardized species code; for hybrids, the species code for the male is followed by the code for the female and the codes are separated by an ''x'' (codes are available on our website; see § 23.7).

(ii) Source code.

(iii) Two-letter ISO code of the country of origin.

(iv) Year of harvest.

(v) Processing plant code and lot identification number.

(3) If caviar is repackaged before export or re-export, the repackaging plant must affix a non-reusable label to the primary container that includes all of the following information:

(i) The standardized species code, source code, and two-letter ISO code of the country of origin.

(ii) Year of repackaging and the repackaging plant code, which incorporates the two-letter ISO code for the repackaging country if different from the country of origin.

(iii) Lot identification number or CITES document number.

(4) The exact quantity of caviar must be indicated on any secondary container along with a description of the contents in accordance with international customs regulations.

(c) *Documentation requirements*. Unless the sturgeon caviar qualifies as a personal or household effect under § 23.15, the CITES document or an annex attached to the document must contain all information that is given on the label. The exact quantity of each species of caviar must be indicated on the CITES document.

(d) *Export quotas*. Commercial shipments of sturgeon caviar from stocks shared between different countries may be imported only if all of the following conditions have been met:

(1) The relevant countries have established annual export quotas for the shared stocks that were derived from catch quotas agreed among the countries and based on an appropriate regional conservation strategy and monitoring regime.

(2) The quotas have been communicated to the CITES Secretariat and the Secretariat has confirmed that the quotas have been agreed by all relevant countries.

(3) The CITES Secretariat has communicated these annual quotas to CITES Parties.

(4) The caviar is exported during the calendar year in which it was harvested and processed.

(e) *Re-exports*. Any re-export of sturgeon caviar must occur within 18 months from thedate of issuance of the original export permit.

(f) *Pre-Convention*. Sturgeon caviar may not be imported, exported, or re-exported under a pre-Convention certificate.

(g) *Mixed caviar*. Caviar and caviar products that consist of roe from more than one species may only be imported into or exported from the United States if the exact quantity of roe from each species is known and is indicated on the CITES document.

(h) *U.S. application forms*. Application forms can be obtained from our website or by contacting us (see § 23.7). For CITES document requirements, see § 23.36 for export permits and § 23.37 for re-export certificates. For export, complete Form 3–200–76 and submit it to the U.S. Management Authority. For re-export, complete Form 3–200–73 and submit it to FWS Law Enforcement.

§ 23.72 How can I trade internationally in plants?

(a) *U.S. and foreign general provisions*: In addition to the requirements of this section, the import, export, or re-export of CITES plant specimens must meet the other requirements of this part (see subparts B and C for prohibitions and application procedures).

(b) *Seeds*. International shipments of seeds of any species listed in Appendix I, except for seeds of certain artificially propagated hybrids (see § 23.92), or seeds of species listed in Appendix II or III with an annotation that includes seeds, must be accompanied by a valid CITES document. International shipments of CITES seeds that are artificially propagated also must be accompanied by a valid CITES document.

(c) *A plant propagated from exempt plant material*. A plant grown from exempt plant material is regulated by CITES.

(1) The proposed shipment of the specimen is treated as an export even if the exempt plant material from which it was derived was previously imported. The country of origin is the country in which the specimen ceased to qualify for the exemption.

(2) Plants grown from exempt plant material qualify as artificially propagated provided they are grown under controlled conditions.

(3) To export plants grown from exempt plant material under controlled conditions, complete Form 3–200–33 for a certificate for artificially propagated plants.

(d) *Salvaged plants*.

(1) For purposes of this section, *salvaged plant* means a plant taken from the wild as a result of some environmental modification in a country where a Party has done all of the following:

(i) Ensured that the environmental modification program does not threaten the survival of CITES plant species, and that protection of Appendix-I species *in situ* is considered a national and international obligation.

(ii) Established salvaged specimens in cultivation after concerted attempts have failed to ensure that the environmental modification program would not put at risk wild populations of CITES species.

(2) International trade in salvaged Appendix-I plants, and Appendix-II plants whose entry into trade might otherwise have been considered detrimental to the survival of the species in the wild, may be permitted only when all the following conditions are met:

(i) Such trade would clearly benefit the survival of the species in the wild or in cultivation.

(ii) Import is for the purposes of care and propagation.

(iii) Import is by a *bona fide* botanic garden or scientific institution.

(iv) Any salvaged Appendix-I plant will not be sold or used to establish a commercial operation for artificial propagation after import.

§ 23.73 How can I trade internationally in timber?

(a) *U.S. and foreign general provisions*: In addition to the requirements of this section, the import, export, or re-export of timber species listed under CITES must meet the other requirements of this part (see subparts B and C for prohibitions and application procedures).

(b) *Definitions*. The following definitions apply to parts, products, and derivatives that appear in the annotations to certain timber species in the CITES Appendices. These definitions are based on the tariff classifications of the Harmonized System of the World Customs Organization.

(1) *Logs* means all wood in the rough, whether or not stripped of bark or sapwood, or roughly squared for processing, notably into sawn wood, pulpwood, or veneer sheets.

(2) *Sawn wood* means wood simply sawn lengthwise or produced by a profile-chipping process. Sawn wood normally exceeds 6 mm in thickness.

(3) *Veneer sheets* means thin layers or sheets of wood of uniform thickness, usually 6 mm or less, usually peeled or sliced, for use in making plywood, veneer furniture, veneer containers, or similar products.

(4) *Plywood means* wood material consisting of three or more sheets of wood glued and pressed one on the other and generally disposed so that the grains of successive layers are at an angle.

(c) The following exceptions apply to Appendix-II or -III timber species that have a substantive annotation that designates either logs, sawn wood, and veneer sheets, or logs, sawn wood, veneer sheets, and plywood:

(1) *Change in destination*. When a shipment of timber destined for one country is redirected to another, the Management Authority in the country of import may change the name and address of the importer indicated on the CITES document under the following conditions:

(i) The quantity imported is the same as the quantity certified by a stamp or seal and authorized signature of the Management Authority on the CITES document at the time of export or re-export.

(ii) The number of the bill of lading for the shipment is on the CITES document, and the bill of lading is presented at the time of import.

(iii) The import takes place before the CITES document expires, and the period of validity has not been extended.

(iv) The Management Authority of the importing country includes the following statement in block 5, or an equivalent place, of the CITES document: ''Import into [name of country] permitted in accordance with [cite the appropriate section number from the current permit and certificate resolution] on [date].'' The modification is certified with an official stamp and signature.

(v) The Management Authority sends a copy of the amended CITES document

to the country of export or re-export and the Secretariat.

(2) *Extension of CITES document validity.* A Management Authority in the country of import may extend the validity of an export permit or re-export certificate beyond the normal maximum of 6 months after the date of issue under the following conditions:

(i) The shipment has arrived in the port of final destination before the CITES document expires, is being held in customs bond, and is not considered imported.

(ii) The time extension does not exceed 6 months from the date of expiration of the CITES document and no previous extension has been issued.

(iii) The Management Authority has included in block 5, or an equivalent place, of the CITES document the date of arrival and the new date of expiration on the document, and certified the modification with an official stamp and signature.

(iv) The shipment is imported into the country from the port where the Management Authority issued the extension and before the amended CITES document expires.

(v) The Management Authority sends a copy of the amended CITES document to the country of export or re-export and to the Secretariat.

§ 23.74 How can I trade internationally in personal sport-hunted trophies?

(a) *U.S. and foreign general provisions.* Except as provided for personal and household effects in § 23.15, the import, export, or re-export of sport-hunted trophies of species listed under CITES must meet the requirements of this section and the other requirements of this part (see subparts B and C for prohibitions and application procedures).

(b) *Sport-hunted trophy* means raw or tanned parts of a specimen that was taken by a hunter, who is also the importer, exporter, or re-exporter, during a sport hunt for personal use. It may include the bones, claws, hair, head, hide, hooves, horns, meat, skull, teeth, tusks, or any taxidermied part, including, but not limited to, a rug or taxidermied head, shoulder, or full mount. It does not include articles made from a trophy, such as worked, manufactured, or handicraft items for use as clothing, curios, ornamentation, jewelry, or other utilitarian items.

(c) *Use after import.* You may use your sport-hunted trophy after import into the United States as provided in § 23.55.

(d) *Quantity and tagging.* The following provisions apply to the issuance and acceptance of U.S. and foreign CITES documents:

(1) The number of trophies that one hunter may import in any calendar year for the following species is:

(i) No more than two leopard (*Panthera pardus*) trophies.

(ii) No more than one markhor (*Capra falconeri*) trophy.

(iii) No more than one black rhinoceros (*Diceros bicornis*) trophy.

(2) Each trophy imported, exported, or re-exported must be marked or tagged in the following manner:

(i) Leopard and markhor: Each raw or tanned skin must have a self-locking tag inserted through the skin and permanently locked in place using the locking mechanism of the tag. The tag must indicate the country of origin, the number of the specimen in relation to the annual quota, and the calendar year in which the specimen was taken in the wild. A mounted sport-hunted trophy must be accompanied by the tag from the skin used to make the mount.

(ii) Black rhinoceros: Parts of the trophy, including, but not limited to, skin, skull, or horns, whether mounted or loose, should be individually marked with reference to the country of origin, species, the number of the specimen in relation to the annual quota, and the year of export.

(3) The export permit or re-export certificate or an annex attached to the permit or certificate must contain all the information that is given on the tag.

Subpart F—Disposal of Confiscated Wildlife and Plants

§ 23.78 What happens to confiscated wildlife and plants?

(a) *Purpose.* Article VIII of the Treaty provides for confiscation or return to the country of export of specimens that are traded in violation of CITES.

(b) *Disposal options.* Part 12 of this subchapter provides the options we have for disposing of forfeited and abandoned live and dead wildlife and plants. These include maintenance in captivity either in the United States or in the country of export, return to the wild under limited circumstances, and sale of certain Appendix-II or -III specimens. Under some conditions, euthanasia or destruction may be necessary.

(1) We use a plant rescue center program to dispose of confiscated live plants. Participants in this program may also assist APHIS, CBP, and FWS Law Enforcement in holding seized specimens as evidence pending any legal decisions.

(2) We dispose of confiscated live wildlife on a case-by-case basis at the time of seizure and forfeiture, and consider the quantity, protection level, and husbandry needs of the wildlife.

(c) *Re-export.* We may issue a re-export certificate for a CITES specimen that was forfeited or abandoned when the certificate indicates the specimen was confiscated and when the re-export meets one of the following purposes:

(1) For any CITES species, the return of a live specimen to the Management Authority of the country of export, placement of a live specimen in a rescue center, or use of the specimen for law enforcement, judicial, or forensic purposes.

(2) For an Appendix-II or -III species, the disposal of the specimen in an appropriate manner that benefits enforcement and administration of the Convention.

(d) *Consultation process.* FWS and APHIS may consult with the Management Authority in the country of export or re-export and other relevant governmental and nongovernmental experts before making a decision on the disposal of confiscated live specimens that have been forfeited or abandoned to the FWS, APHIS, or CBP.

§ 23.79 How may I participate in the Plant Rescue Center Program?

(a) *Purpose.* We have established the Plant Rescue Center Program to place confiscated live plants quickly to prevent physical damage to the plants.

(b) *Criteria.* Institutions interested in participating in this program must be:

(1) Nonprofit, open to the public, and have the expertise and facilities to care for confiscated exotic plant specimens. A participating institution may be a botanical garden, arboretum, zoological park, research institution, or other qualifying institution.

(2) Willing to transfer confiscated plants from the port where they were confiscated to their facilities at their own expense.

(3) Willing to return the plants to the U.S. Government if the country of export has requested their return. The U.S. Government will then coordinate the plants' return to the country of export.

(4) Willing to accept and maintain a plant shipment as a unit until it has received authorization from us to incorporate the shipment into its permanent collection or transfer a portion of it to another participating institution.

(c) *Participation.* Institutions wishing to participate in the Plant Rescue Center Program should contact the U.S. Management Authority (see § 23.7). They must provide a brief description of the greenhouse or display facilities, the

names and telephone numbers of any individuals authorized to accept plants on behalf of the institution, and the mailing address where the plants should be sent. In addition, interested institutions must indicate if they are limited with regard to the type of plants they are able to maintain or the quantities of plants they can handle at one time.

Subpart G—CITES Administration

§ 23.84 What are the roles of the Secretariat and the committees?

(a) *Secretariat.* The Secretariat is headed by the Secretary-General. Its functions are listed in Article XII of the Treaty and include:

(1) Arranging and staffing meetings of the Parties.

(2) Performing functions as requested in relation to listings in the Appendices.

(3) Undertaking scientific and technical studies, as authorized by the CoP, to contribute to implementation of the Convention.

(4) Studying reports of the Parties and requesting additional information as appropriate to ensure effective implementation of the Convention.

(5) Bringing to the attention of the Parties matters relevant to the Convention.

(6) Periodically publishing and distributing to the Parties current editions of the Appendices as well as information on the identification of specimens of species listed in the Appendices.

(7) Preparing annual reports to the Parties on its work and on the implementation of the Convention.

(8) Making recommendations for the implementation of the aims and provisions of the Convention, including the exchange of scientific and technical information.

(9) Performing other functions entrusted to it by the Parties.

(b) *Committees.* The Parties have established four committees to provide administrative and technical support to the Parties and to the Secretariat. The CoP may charge any of these committees with tasks.

(1) The Standing Committee steers the work and performance of the Convention between CoPs.

(i) This committee oversees development and execution of the Secretariat's budget, advises other committees, appoints working groups, and carries out activities on behalf of the Parties between CoPs.

(ii) Regional representatives are countries that are elected by their respective geographic regions at the CoP.

(2) The Animals Committee and the Plants Committee provide advice and guidance to the CoP, the other committees, working groups, and the Secretariat on all matters relevant to international trade in species included in the Appendices.

(i) These committees also assist the Nomenclature Committee in the development and maintenance of a standardized list of species names; provide assistance with regard to identification of species listed in the Appendices; cooperate with the Secretariat to assist Scientific Authorities; compile and evaluate data on Appendix-II species that are considered significantly affected by trade; periodically review the status of wildlife and plant species listed in the Appendices; advise range countries on management techniques when requested; draft resolutions on wildlife and plant matters for consideration by the Parties; deal with issues related to the transport of live specimens; and report to the CoP and the Standing Committee.

(ii) Regional representatives are individuals, who are elected by their respective geographic regions at the CoP.

(3) The Nomenclature Committee is responsible for developing or identifying standard nomenclature references for wildlife and plant taxa and making recommendations on nomenclature to Parties, the CoP, other committees, working groups, and the Secretariat. The Nomenclature Committee is made up of one zoologist and one botanist, who are appointed by the CoP.

§ 23.85 What is a meeting of the Conference of the Parties (CoP)?

(a) *Purpose.* Article XI of the Treaty provides general guidelines for meetings of the countries that have ratified, accepted, approved, or acceded to CITES. The Parties currently meet for 2 weeks every 3 years. At these meetings, the Parties consider amendments to the Appendices and resolutions and decisions to improve the implementation of CITES. The Parties adopt amendments to the lists of species in Appendix I and II and resolutions by a two-thirds majority of Parties present and voting. The Secretariat or any Party may also submit reports on wildlife and plant trade for consideration.

(b) *CoP locations and dates.* At a CoP, Parties interested in hosting the next meeting notify the Secretariat. The Parties vote to select the location of the next CoP. Once a country has been chosen, it works with the Secretariat to set the date and specific venue. The Secretariat then notifies the Parties of the date for the next CoP.

(c) *Attendance at a CoP.* All Parties may participate and vote at a CoP. Non-Party countries may participate, but may not vote. Organizations technically qualified in protection, conservation, or management of wildlife or plants may participate in a CoP as observers if they are approved, but they are not eligible to vote.

(1) International organizations must apply to the CITES Secretariat for approval to attend a CoP as an observer.

(2) National organizations must apply to the Management Authority of the country where they are located for approval to attend a CoP as an observer.

§ 23.86 How can I obtain information on a CoP?

As we receive information on an upcoming CoP from the CITES Secretariat, we will notify the public either through published notices in the **Federal Register** or postings on our website (see § 23.7). We will provide:

(a) A summary of the information we have received with an invitation for the public to comment and provide information on the agenda, proposed amendments to the Appendices, and proposed resolutions that they believe the United States should submit for consideration at the CoP.

(b) Information on times, dates, and locations of public meetings.

(c) Information on how international and national organizations may apply to participate as observers.

§ 23.87 How does the United States develop documents and negotiating positions for a CoP?

(a) In developing documents and negotiating positions for a CoP, we:

(1) Will provide for at least one public meeting.

(2) Consult with appropriate Federal, State, and tribal agencies; foreign governmental agencies; scientists; experts; and others.

(3) Seek public comment through published **Federal Register** notices or postings on our website that:

(i) Solicit recommendations on potential proposals to amend the Appendices, draft resolutions, and other documents for U.S. submission to the CoP.

(ii) Announce proposals to amend the Appendices, draft resolutions, and other documents that the United States is considering submitting to the CoP.

(iii) Provide the CoP agenda and a list of the amendments to the Appendices proposed for the CoP, a summary of our proposed negotiating positions on these items, and the reasons for our proposed positions.

(4) Consider comments received in response to notices or postings provided in paragraph (a)(3) of this section.

(b) We submit the following documents to the Secretariat for consideration at the CoP:

(1) Draft resolutions and other documents at least 150 days before the CoP.

(2) Proposals to amend the Appendices at least 150 days before the CoP if we have consulted all range countries, or 330 days before the CoP if we have not consulted the range countries. For the latter, the additional time allows for the range countries to be consulted through the Secretariat.

(c) The Director may modify or suspend any of these procedures if they would interfere with the timely or appropriate development of documents for submission to the CoP and U.S. negotiating positions.

(d) We may receive additional information at a CoP or circumstances may develop that have an impact on our tentative negotiating positions. As a result, the U.S. representatives to a CoP may find it necessary to modify, reverse, or otherwise change any of those positions when to do so would be in the best interests of the United States or the conservation of the species.

§ 23.88 What are the resolutions and decisions of the CoP?

(a) *Purpose*. Under Article XI of the Treaty, the Parties agree to resolutions and decisions that clarify and interpret the Convention to improve its effectiveness. Resolutions are generally intended to provide long-standing guidance, whereas decisions typically contain instructions to a specific committee, Parties, or the Secretariat. Decisions are often intended to be implemented by a specific date, and then they expire.

(b) *Effective date*. A resolution or decision adopted by the Parties becomes effective 90 days after the last day of the meeting at which it was adopted, unless otherwise specified in the resolution or decision.

Subpart H—Lists of Species

§ 23.89 What are the criteria for listing species in Appendix I or II?

(a) *Purpose*. Article XV of the Treaty sets out the procedures for amending CITES Appendices I and II. A species must meet trade and biological criteria listed in the CITES resolution for amendment of Appendices I and II. When determining whether a species qualifies for inclusion in or removal from Appendix I or II, or transfer from one Appendix to another, we will:

(1) Consult with States, Tribes, range countries, relevant experts, other Federal agencies, and the general public.

(2) Utilize the best available biological information.

(3) Evaluate that information against the criteria in paragraphs (b) through (f) of this section.

(b) *Listing a species in Appendix I*. Any species qualifies for inclusion in Appendix I if it is or may be affected by trade and meets, or is likely to meet, at least one biological criterion for Appendix I.

(1) These criteria are:

(i) The size of the wild population is small.

(ii) Area of distribution is restricted.

(iii) There is an observed, inferred, or projected marked decline in the population size in the wild.

(2) Factors to be considered include, but are not limited to, population and range fragmentation; habitat availability or quality; area of distribution; taxon-specific vulnerabilities due to life history, behavior, or other intrinsic factors, such as migration; population structure and niche requirements; threats from extrinsic factors such as the form of exploitation, introduced species, habitat degradation and destruction, and stochastic events; or decreases in recruitment.

(c) *Listing a species in Appendix II due to actual or potential threats*. Any species qualifies for inclusion in Appendix II if it is or may be affected by trade and meets at least one of the criteria for listing in Appendix II based on actual or potential threats to that species. These criteria are:

(1) It is known, or can be inferred or projected, that the regulation of trade is necessary to avoid the species becoming eligible for inclusion in Appendix I in the near future.

(2) It is known, or can be inferred or projected, that the regulation of trade in the species is required to ensure that the harvest of specimens from the wild is not reducing the wild population to a level at which its survival might be threatened by continued harvest or other influences.

(d) *Listing a species in Appendix II due to similarity of appearance or other factors*. Any species qualifies for inclusion in Appendix II if it meets either of the criteria for listing in Appendix II due to similarity of appearance or other factors. These criteria are:

(1) The specimens of the species in the form in which they are traded resemble specimens of a species listed in Appendix II due to criteria in paragraph (c) of this section or in Appendix I, such that enforcement officers who encounter specimens of such similar CITES species are unlikely to be able to distinguish between them.

(2) There are compelling reasons other than those in paragraph (d)(1) of this section to ensure that effective control of trade in currently listed species is achieved.

(e) *Other issues*. We will evaluate any potential changes to the Appendices, taking into consideration other issues, including but not limited to, split-listing, annotation, listings of higher taxa and hybrids, and specific listing issues related to plants and commercially exploited aquatic species.

(f) *Precautionary measures*. We will evaluate any potential transfers from Appendix I to II or removal of species from the Appendices in the context of precautionary measures.

(g) *Proposal*. If a Party determines that a taxon qualifies for inclusion in or removal from Appendix I or II, or transfer from one Appendix to another, a proposal may be submitted to the Secretariat for consideration by the CoP.

(1) The proposal should indicate the intent of the specific action (such as inclusion in Appendix I or II); be specific and accurate as to the parts and derivatives to be included in the listing; ensure that any proposed annotation is consistent with existing annotations; state the criteria against which the proposal is to be judged; and provide a justification for the basis on which the species meets the relevant criteria.

(2) The proposal must be in a prescribed format. Contact the U.S. Scientific Authority for a copy (see § 23.7).

§ 23.90 What are the criteria for listing species in Appendix III?

(a) *Purpose*. Article XVI of the Treaty sets out the procedures for amending Appendix III.

(b) *General procedure*. A Party may unilaterally, at any time, submit a request to list a species in Appendix III to the CITES Secretariat. The listing will become effective 90 days after the Secretariat notifies the Parties of the request.

(c) *Criteria for listing*. For a Party to list a species in Appendix III, all of the following criteria must be met:

(1) The species must be native to the country listing the species.

(2) The species must be protected under that country's laws or regulations to prevent or restrict exploitation and control trade, and the laws or regulations are being implemented.

(3) The species is in international trade, and there are indications that the cooperation of other Parties would help to control illegal trade.

(4) The listing Party must inform the Management Authorities of other range countries, the known major importing countries, the Secretariat, and the Animals Committee or the Plants Committee that it is considering the listing and seek their opinions on the potential effects of the listing.

(d) *Annotation*. The listing Party may annotate the Appendix-III listing to include only specific parts, products, derivatives, or life stages, as long as the Secretariat is notified of the annotation.

(e) *U.S. procedure*. The procedure to list a species native to the United States in Appendix III is as follows:

(1) We will consult with and solicit comments from all States and Tribes where the species occurs and all other range countries.

(2) We will publish a proposed rule in the **Federal Register** to solicit comments from the public.

(3) If after evaluating the comments received and available information we determine the species should be listed in Appendix III, we will publish a final rule in the **Federal Register** and notify the Secretariat of the listing.

(f) *Removing a species from Appendix III*. We will monitor the international trade in Appendix-III species listed by us and periodically evaluate whether each species continues to meet the listing criteria in paragraph (c) of this section. We will remove a species from Appendix III provided all of the following criteria are met:

(1) International trade in the species is very limited. As a general guide, we will consider removal when exports involve fewer than 5 shipments per year or fewer than 100 individual animals or plants.

(2) Legal and illegal trade in the species, including international trade or interstate commerce, is determined not to be a concern.

(g) *Transferring a species from Appendix III to Appendix I or II*. If, after monitoring the trade and evaluating the status of an Appendix-III species we listed, we determine that the species meets the criteria in § 23.89(b) through (d) of this section for listing in Appendix I or II, we will consider whether to submit a proposal to amend the listing at the next CoP.

§ 23.91 How do I find out if a species is listed?

(a) *CITES list*. The official CITES list includes species of wildlife and plants placed in Appendix I, II, and III in accordance with the provisions of Articles XV and XVI of the Treaty. This list is maintained by the CITES Secretariat based on decisions of the Parties. You may access the official list from the CITES website (see § 23.7).

(b) *Effective date*. Amendments to the CITES list are effective as follows:

(1) Appendix-I and -II species listings adopted at the CoP are effective 90 days after the last day of the CoP, unless otherwise specified in the proposal.

(2) Appendix-I and -II species listings adopted between CoPs by postal procedures are effective 120 days after the Secretariat has communicated comments and recommendations on the listing to the Parties if the Secretariat does not receive an objection to the proposed amendment from a Party.

(3) Appendix-III species listings are effective 90 days after the date the Secretariat has communicated such listings to the Parties. A listing Party may withdraw a species from the list at any time by notifying the Secretariat. The withdrawal is effective 30 days after the Secretariat has communicated the withdrawal to the Parties.

§ 23.92 Are any wildlife or plants, and their parts, products, or derivatives, exempt?

(a) All living or dead wildlife and plants in Appendix I, II, and III and all their readily recognizable parts, products, and derivatives must meet the requirements of CITES and this part, except as indicated in paragraph (b) of this section.

(b) The following are exempt from the requirements of CITES and do not need CITES documents. You may be required to demonstrate that your specimen qualifies as exempt under this section. For specimens that are exempt from CITES requirements, you must still follow the clearance requirements for wildlife in part 14 of this subchapter and for plants in part 24 of this subchapter and 7 CFR parts 319, 352, and 355.

(1) *Appendix-III wildlife and Appendix-II or -III plants*.

(i) Where an annotation designates what is excluded from CITES requirements, any part, product, or derivative that is specifically excluded.

(ii) Where an annotation designates what is covered by the Treaty, all parts, products, or derivatives that are not designated.

(2) *Plant hybrids*.

(i) Seeds and pollen (including pollinia), cut flowers, and flasked seedlings or tissue cultures of hybrids that qualify as artificially propagated (see § 23.64) and that were produced from one or more Appendix-I species or taxa that are not annotated to specifically include hybrids in the CITES list.

(ii) Specimens of an Appendix-II or -III plant taxon with an annotation that specifically excludes hybrids.

(3) *Flasked seedlings of Appendix-I orchids*. Flasked seedlings of an Appendix-I orchid species that qualify as artificially propagated (see § 23.64).

(4) *Marine specimens listed in Appendix II that are protected under another treaty, convention, or international agreement which was in force on July 1, 1975* as provided in § 23.39(d).

(5) *Coral sand and coral fragments* as defined in § 23.5.

(6) *Personal and household effects* as provided in § 23.15.

(7) *Urine, feces, and synthetically derived DNA* as provided in § 23.16.

(8) *Certain wildlife hybrids* as provided in § 23.43.

Dated: May 17, 2007.

Todd Willens,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–3960; Filed 8–22–07; 8:45 am]

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Federal Register

Thursday,
August 23, 2007

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 300

Implementation of Measures Adopted by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) To Facilitate Conservation and Management of Antarctic Marine Living Resources (AMLR); Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 070806446–7446–01; I.D. 022106C]

RIN 0648–AS75

Antarctic Marine Living Resources (AMLR); Centralized Vessel Monitoring System; Preapproval of Fresh Toothfish Imports; Customs Entry Number; Electronic Catch Documentation Scheme; Scientific Observers; Definitions; Seal Excluder Device; Information on Harvesting Vessels

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule implementing measures adopted by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) to facilitate conservation and management of AMLR. This final rule requires the use of the Centralized satellite-linked vessel monitoring system (VMS) by all U.S. vessels harvesting AMLR and makes use of VMS by the harvesting vessel a condition of import for all U.S. dealers seeking to import shipments of toothfish (*Dissostichus*) into the United States. This final rule also exempts all shipments of fresh toothfish from the NMFS preapproval process and allows importers of frozen toothfish to submit the U.S. Customs 7501 entry number subsequent to their initial application for preapproval. This final rule requires the use of Electronic Catch Documents for all U.S. dealers seeking to import shipments of toothfish into the United States. Paper-based catch documents for toothfish will no longer be accepted. This final rule also requires the use of a seal excluder device on krill vessels using trawl gear in the Area of the Convention for the Conservation of Antarctic Marine Living Resources (Convention Area). This final rule adds or amends definitions of ''Antarctic marine living resources'', ''export'', ''import'', ''international observer'', ''land or landing'', ''mobile transceiver unit'', ''national observer'', ''Office for Law Enforcement (OLE)'', ''Port State'', ''re-export'', ''seal excluder device'', ''transship or transshipment'', and ''vessel monitoring system (VMS)''. This final rule also expands the list of requirements and prohibitions regarding scientific observers and clarifies the duties and responsibilities of the observers on the vessels and of the vessel owners hosting the observers. This final rule identifies new information on all vessels licensed by CCAMLR Members to harvest AMLR in the area identified in the Convention on the Conservation of Antarctic Marine Living Resources (Convention). The intent of this rule is to incorporate new conservation measures, to revise procedures to facilitate enforcement, and to fulfill U.S. obligations in CCAMLR.

DATES: This rule is effective September 24, 2007.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this action, the Final Programmatic Environmental Impact Statement (FPEIS), and the Record of Decision (ROD) may be obtained from the mailing address listed here or by calling Robin Tuttle, NMFS–S&T, 1315 East-West Highway, Silver Spring, MD 20910 (also see **FOR FURTHER INFORMATION CONTACT**).

Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule to Robin Tuttle at the address specified above and also to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer) or e-mail to *David_Rosker@ob.eop.gov*, or fax to (202) 395–7825.

FOR FURTHER INFORMATION CONTACT: Robin Tuttle at 301–713–2282 ext. 199, fax 301–713–4137, or *robin.tuttle@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register's** Web site at *http://www.access.gpo.gov/su-docs/aces/aces140.html*.

Statutory and Regulatory Background

NMFS published the proposed rule for this action in the **Federal Register** on July 13, 2006 (71 FR 39642) with a public comment period through August 14, 2006. NMFS received comments from three commenters and the comments and responses are discussed under the succeeding Comments and Responses section of this preamble.

Antarctic fisheries are managed under the authority of the Antarctic Marine Living Resources Convention Act of 1984 (Act) codified at 16 U.S.C. 2431 *et seq*. NMFS implements conservation measures developed by CCAMLR, and adopted by the United States, through regulations at 50 CFR part 300, subpart G. Changes to the existing regulations are necessary to incorporate new conservation measures and to revise procedures to facilitate enforcement of new and existing conservation measures. The changes implemented by this final rule involve: Centralized VMS; Dealer Permits and Preapproval; Electronic Catch Documents; Scientific Observers; Seal Excluder Device; Definitions; and Information on Harvesting Vessels. While each of these changes is described below, for a more complete discussion please see the preamble to the proposed rule published on July 13, 2006 (71 FR 39642).

Centralized Vessel Monitoring System (C–VMS)

The final rule requires all U.S. vessels, when on a fishing trip involving the harvesting of AMLR, to use a VMS unit that automatically transmits the vessel's position at least every 4 hours to a land-based fisheries monitoring center designated by NMFS. Previously only movement into or out of the Convention Area, not position, was required to be reported. In addition, the final rule requires use of a VMS unit from the time a vessel leaves any port until its return to any port. These measures will help manage fishing within the Convention Area with greater certainty and will make it more difficult, in particular, for illegal, unregulated and unreported (IUU) fishing in the Convention Area to be misreported as catch from outside the Convention Area.

The final rule also requires any U.S. dealer seeking to import toothfish into the United States through the preapproval process to have documentation that indicates that the toothfish was harvested by a vessel using C–VMS regardless of where the vessel caught the toothfish. All imports of toothfish or toothfish products would have to be accompanied by verifiable information available to the Catch Documentation Scheme (CDS) Officer from the Secretariat documenting the use of C–VMS. U.S. dealers seeking to import toothfish or toothfish products originating from small artisanal boats fishing in the Exclusive Economics Zones (EEZ) of Peru or Chile will not have to possess information documenting the use of C–VMS by such artisanal boats. NMFS exempts such dealers because of the small size of

these artisanal boats and their inability to navigate beyond the EEZ.

Dealer Permits and Preapproval

The final rule: (1) Allows additional time for dealers to supply the U.S. Customs 7501 number; and (2) exempts all shipments of fresh toothfish from the requirement for preapproval. Currently, after receiving an AMLR dealer permit but at least 15 business days prior to an expected import, the dealer seeking to import frozen toothfish, or fresh toothfish in quantities greater than 2,000 kilograms (kg), is required to submit to NMFS the Dissostichus Catch Documents (DCD) that will accompany each anticipated toothfish shipment as well as an ''Application for Preapproval of Catch Documents'' requesting preapproval to allow import of the toothfish shipment. NMFS requires a dealer to include on the application form for a specific toothfish shipment information regarding the shipment's estimated date of arrival, port of arrival, consignee(s) of product, DCD document number, Flag State confirmation number, export reference number, amount to be imported, and the U.S. Customs 7501 number (sometimes referred to as the ''Entry'' number). This 7501 number is an identifying number assigned to a particular shipment by a U.S. Customs broker. The dealer is required to fax or express mail the documentation described above, along with a check for the required fee, so that NMFS receives it at least 15 business days prior to the anticipated date of import. However, some dealers have difficulty obtaining a U.S. Customs 7501 number 15 days in advance of a shipment's arrival. The difficulty arises because Customs brokers have limitations on how soon they can assign the 7501 number to a pending shipment and, most often, have difficulty assigning it 15 days in advance of the shipment's arrival. For this reason, NMFS is revising the ''Application for Preapproval of Catch Documents'' form specifically to allow dealers additional time to forward the 7501 number to NMFS. Under the final rule, dealers may supply the 7501 number up to 3 working days prior to a toothfish shipment's arrival. NMFS needs at least 3 working days to process and issue a preapproval certificate. All other information requested on the ''Application for Preapproval of Catch Documents'' must be submitted, as presently required, 15 days in advance of the shipment's arrival.

Due to the extremely quick turnaround time required for shipments of fresh toothfish, NMFS has accepted the ''Application for Preapproval of Catch Documents'' within 24 hours after the import of a shipment of fresh toothfish, rather than 15 days in advance of the shipment. This exception to preapproval was available for shipments of fresh toothfish under 2,000 kg. The final rule extends this exception to shipments of fresh toothfish over 2,000 kg. Therefore, no shipment of fresh toothfish requires preapproval; however, the final rule requires the completion and submission of a Reporting Form for Catch Documents Accompanying Fresh, Air-Shipped Shipments of Toothfish within 24 hours of import for all shipments of fresh toothfish whether greater or less than 2,000 kg. The number of shipments of fresh toothfish greater than 2,000 kg are small. These shipments are typically harvested by the artisanal fishery of Chile and have historically not been the cause for enforcement concern. The infractions common to large shipments of frozen toothfish do not occur with small shipments of fresh toothfish. One common infraction results when legally and illegally harvested toothfish are frozen and combined in one shipment and exported with a single ''legal'' DCD. Large shipments of frozen toothfish might also include fish illegally harvested in a CCAMLR restricted area and claimed to have been harvested in an EEZ or on the high seas. As artisanal boats harvesting and shipping small amounts of fresh fish are not equipped to reach these CCAMLR restricted areas where any transshipment would take place, they are not suspected of this type of infraction. Pursuant to a bilateral agreement with Chile, NMFS has a real time verification process for shipments of toothfish harvested by Chile's artisanal toothfish fishery. Under the final rule, DCDs for shipments of fresh toothfish from Chile will be reviewed without a fee-for-service charge. Shipments of all frozen toothfish including those in quantities of less than 2,000 kg will still require preapproval. NMFS regulations at 50 CFR 300.107(c)(6) and 300.114 regarding the re-export of toothfish are not revised. The revised DCD, revised NMFS application for an annual AMLR dealer permit, revised NMFS application for preapproval, and the Reporting Form for Catch Documents Accompanying Fresh, Air-Shipped Shipments of Toothfish (report) referenced under this section are available from NMFS (see **ADDRESSES**).

Electronic Catch Documents

In October 2004, CCAMLR adopted a resolution noting the successful completion of the electronic toothfish document trial and urging CCAMLR Contracting and Non-Contracting Parties to adopt the electronic format as a matter of priority. The electronic system, by means of internal checks, does not allow a country's CDS officer to incorrectly complete a DCD. Requiring U.S. importers of toothfish to use the electronic format will, thus, eliminate the submission of paper-based catch documents incorrectly completed by Flag States, Exporting States, Importing States and Re-exporting States. Paper documents can be difficult to obtain in a timely manner. As a result, in these cases, an incentive exists to submit a fraudulent paper-based DCD to expedite a shipment. The electronic catch documentation system (E–CDS), by requiring electronic DCDs, eliminates the incentive by allowing a real-time check of the amount presented for import against the amount authorized for harvesting. All information is validated on presentation of the information. The final rule requires U.S. dealers importing toothfish into the United States to use the electronic format. Once the final rule goes into effect, NMFS will only accept electronic catch documents and will no longer accept paper catch documents for toothfish shipments. NMFS will not require the use of electronic documents until September 24, 2007. In the preamble to the proposed rule (July 13, 2006; 71 FR 39642), NMFS had announced its intention to delay the requirement for electronic documents for 60 days after publication of the final rule in order to allow U.S. dealers sufficient time to comply with the changes of moving to the electronic format. However, NMFS believes that 30 days is adequate time for U.S. dealers to comply. Moreover, NMFS believes that it is important to put in place the E–CDS requirement as soon as possible. The electronic documentation should provide further assurance to the public that the United States has an efficient and effective system in place to discourage and prevent importation of IUU fish.

Scientific Observers

CCAMLR has identified two types of observers, collectively known as scientific observers, who may collect information required in CCAMLR-managed fisheries. The first type, ''national observers,'' are nationals of the Member designating them to operate on board a fishing vessel of that Member and conduct themselves in accordance with national regulations and standards. The second type, ''international observers,'' are observers operating in accordance with bilateral arrangements between the receiving Member whose

vessel is fishing and the designating Member who is providing the observer.

CCAMLR conservation measures require all fishing vessels operating in the Convention Area (except for vessels fishing for krill) to carry on board, throughout all fishing activities within the fishing period, at least one international observer and, where possible, one additional scientific observer, either a national observer or an international observer. In certain exploratory toothfish fisheries, the vessel must carry at least two observers, one of whom must be an international observer. NMFS current regulations, however, only require that each vessel participating in an exploratory fishery carry one scientific observer (see 50 CFR 300.106(c)). In Subareas 88.1, 88.2 and 88.6 and Divisions 58.4.1 and 58.4.2, where exemptions are allowed for setting longlines during daylight hours, CCAMLR requires a vessel to carry two scientific observers, one of which must be an international observer.

NMFS requires, as a condition of a vessel's AMLR harvesting permit, that the vessel carry scientific observers in the Convention Area throughout all fishing activities within the fishing period. Several observers have been placed pursuant to bilateral arrangements negotiated by the Department of State with Japan, South Africa and Ukraine. Others have been U.S. nationals. NMFS coordinates with the vessel permit holders and the observers in all instances to ensure that observers are fully trained in their duties to record the observations required by CCAMLR.

For a vessel to fish with longline gear during daylight hours, CCAMLR Conservation Measure 24–02 requires longline testing trials prior to entering the Convention Area. Vessels choosing not to conduct the testing trials are restricted by CCAMLR Conservation Measure 25–02 to longline fishing at night. Nighttime fishing is one technique for minimizing the incidental mortality of seabirds in the course of longline fishing. Another technique to minimize incidental mortality is the use of weighted longlines. Conservation Measure 24–02 identifies two protocols for monitoring the sink rate of weighted longlines. The more rapidly a weighted line sinks the less likely there is to be seabird interaction, and possible entanglement, with the lines. NMFS regulations do not presently require a vessel to carry scientific observers during line weight testing.

The final rule requires all U.S. vessels fishing in the Convention Area, including vessels fishing for krill, and all U.S. vessels conducting longline testing outside the Convention Area prior to longline fishing within the Convention Area, to carry one or more scientific observers.

The final rule specifies the process for placing national observers on U.S. vessels harvesting AMLR; the duties and responsibilities of the observers on the vessels; and the duties and responsibilities of the vessel owners hosting the observers. International observers placed pursuant to a bilateral arrangement negotiated by the U.S. Department of State would also be subject to the provisions of the final rule.

The final rule expands the list of prohibitions to make it unlawful to assault, resist, oppose, impede, intimidate, sexually harass, bribe or interfere with an observer.

Seal Excluder Device

CCAMLR's Scientific Committee recommended several seal bycatch mitigation measures to CCAMLR in 2004, including that every vessel fishing for krill employ a device for excluding seals by facilitating their escape from the trawl net, and that observers be required on krill vessels to collect reliable data on seal entrapment and on the effectiveness of mitigation devices.

During the 2004/2005 fishing season, scientific observer reports were available from three vessels voluntarily using seal excluder devices while trawling for krill. One of these vessels was a U.S. vessel. The reports indicated that in Area 48, 95 Antarctic fur seals were observed caught during krill fishing operations, of which 74 were released alive, compared to 156 of which 12 were released alive in the 2003/2004 season.

The final rule requires seal excluder devices on all U.S. vessels trawling for krill in Convention Area fisheries.

Definitions

The final rule defines terms used in the implementation of the CDS; the designation and placement of scientific observers on vessels fishing in the CCAMLR Convention Area; the mitigation of seal bycatch; and the operation of CCAMLR's automated and centralized satellite-linked VMS.

The final rule defines or redefines the terms ''export'', ''import'', ''land or landing'', ''Port State'', ''re-export'', and ''transship or transshipment'' as used by NMFS in implementing the CDS. NMFS implemented the CCAMLR CDS for toothfish in 2000. The CDS tracks and monitors trade in toothfish through a DCD, required on all shipments of toothfish, wherever harvested, as a condition of import into the United States or any other CCAMLR Contracting Party. The final rule clarifies that an AMLR Harvesting Permit is required by NMFS only when harvesting toothfish within the Convention Area by deleting ''All species of *Dissostichus* wherever found'' from the definition of Antarctic Marine Living Resources. Harvesting toothfish on high seas areas inside and outside the Convention Area would continue to require a permit issued by NMFS pursuant to the High Seas Fishing Compliance Act (HSFCA), 16 U.S.C. 5501 *et seq.* Areas within the Convention Area subject to national jurisdiction, such as the areas in Convention Subarea 48.3 claimed by the United Kingdom, are not considered areas in the high seas where a HSFCA permit is required. The final rule preserves the requirement that all imports of toothfish, wherever harvested, comply with U.S. import permit conditions and DCD controls.

For the designation and placement of scientific observers on vessels fishing in the CCAMLR Convention Area, the final rule defines ''national observers'' and ''international observers.'' Both national observers and international observers, by definition, are scientific observers.

For the mitigation of seal bycatch, the final rule defines ''seal excluder device'' as a barrier within the body of a trawl net comprised of a metal frame, nylon mesh, or any material that results in an obstruction to seals between the mouth opening and the cod end of the trawl. The body of the trawl net forward of the barrier must include an escape opening through which seals entering the trawl can escape.

The final rule defines ''vessel monitoring system or VMS'' as a system or mobile transceiver unit approved by NMFS for use on vessels that take AMLR, and that allows a Flag State, through the installation of satellite-tracking devices on board its fishing vessels to receive automatic transmission of certain information. The final rule defines ''mobile transceiver unit'' as a vessel monitoring system or VMS device, as set forth at § 300.116, installed on board a vessel that is used for vessel monitoring and transmitting the vessel's position as required by subpart G of 50 CFR part 300. It defines the ''Office for Law Enforcement (OLE)'' as the National Marine Fisheries Service, Office for Law Enforcement, Northeast Division.

Information on Harvesting Vessels

Pursuant to CCAMLR Conservation Measure 10–02, adopted in 2004, NMFS is requesting the following information of all applicants for an AMLR harvesting

permit: The name of the fishing vessel (any previous names, if known); registration number; vessel's International Maritime Organization (IMO) number, if issued; external markings and port registry; the nature of the authorization to fish granted by the Flag State, specifying time periods authorized for fishing; areas of fishing; species targeted; gear used; previous flag, if any; international radio call sign; the name and address of the vessel's owner(s) and any beneficial owner(s), if known; name and address of license owner, if different from vessel owner; type of vessel; where and when built; length; three color photographs of the vessel; and, where applicable, details of the implementation of the tamper-proof requirements on the satellite-linked vessel monitoring device.

In addition, pursuant to CCAMLR Conservation Measure 10–02, NMFS is collecting the following additional information for vessels notified for fishing in exploratory fisheries: Name and address of operator, if different from vessel owner; name and nationality of master and, where relevant, of fishing master; type of fishing method or methods; beam in meters; gross registered tonnage; vessel communication types and numbers; normal crew complement; power of main engine or engines in kilowatts; carrying capacity in tons; number of fish holds and their capacity in cubic meters; and any other information in respect of each licensed vessel considered appropriate (*e.g.*, ice classification) for the purposes of the implementation of the Conservation Measure 21–02.

Comments and Responses

The public comment period on the proposed rule (71 FR 39642) closed at 5 p.m., eastern standard time, on August 14, 2006. A total of three commenters submitted comments (via e-mail and fax) to NMFS on behalf of four non-governmental organizations with environmental interests. These organizations were the National Environmental Trust, the Antarctic Krill Conservation Project, the Center for Biological Diversity, and the Turtle Island Restoration Network.

National Environmental Trust (NET) Comments. The NET commented that finalizing the rule will strengthen the role of the U.S. government as a leader among CCAMLR Member States in adopting measures to prevent illegal, unreported, and unregulated fishing for toothfish and to sustainably manage the second generation Antarctic krill fishery. NET indicated that their comments were endorsed by Greenpeace USA and the Antarctic Krill Conservation Project. Comments by NET on regulatory components follow:

Comment 1: NET supports the requirement that dealers seeking to import toothfish into the United States provide documentation indicating that the toothfish was caught by a vessel participating in C–VMS regardless of where the vessel caught the toothfish. NET also supports the requirement that all U.S. vessels fishing for AMLR have C–VMS and that a VMS unit must be operating from port to port.

Response: These provisions of the rule are designed to discourage IUU fishing and further restrict access to the U.S. market for IUU toothfish.

Comment 2: NET expressed support for the requirement that all U.S. importers of toothfish must use the electronic format of the Dissostichus Catch Document (DCD) that accompanies toothfish imports into the United States.

Response: NMFS expects that this requirement will effectively guard against importation of IUU toothfish with forged paper documentation. The E–CDS is much more reliable and secure in that paper document fields may be incorrectly completed, or even fraudulently completed while the electronic version has logic checks and will not allow the completion of a document with errors with regard to fraud.

Comment 3: NET supports the requirement that all U.S. vessels fishing for AMLR, including krill, must carry one or more scientific observers on board.

Response: NMFS is publishing regulations to implement the CCAMLR Scheme of International Scientific Observation and believes that all U.S. vessels fishing in the Convention Area, including vessels fishing for krill, and U.S. vessels conducting longline testing outside the Convention Area, should carry one or more scientific observers. NMFS agrees with the commenter that detailed data on fishing activities provided by scientific observers is critical to managing AMLR and, in particular, krill, a vital food source for whales, seals, penguins, albatrosses and other sea birds.

Comment 4: NET supports the requirement that seal excluder devices be used on all U.S. vessels trawling for Antarctic krill in the Convention Area.

Response: Beginning in late 2004, NMFS required the sole U.S. krill harvester to use a seal excluder device to eliminate or reduce Antarctic fur seal bycatch. NMFS would now make this a regulatory requirement for all U.S. vessels trawling for Antarctic krill.

Antarctic Krill Conservation Project (the Project) Comments. The Project commented that they welcome the regulatory actions put forward by NMFS to implement CCAMLR–agreed conservation measures and, as Antarctic krill occupies a central role in the Southern Ocean ecosystem, the Project appreciates the proposed regulatory provisions to enhance krill protection.

Comment 5: The Project commented that the regulatory provisions dealing with scientific observers and seal excluder devices will contribute to a better managed krill fishery.

Response: These provisions of the rule are designed to contribute to a better managed krill fishery.

Comment 6: The Project requested that the regulatory provisions requiring C–VMS be applied to U.S. vessels fishing for krill, and encouraged NMFS to urge other countries to take similar action and seek an amendment to CCAMLR Conservation Measure 10–04 to remove the exemption for krill vessels.

Response: Through this final rule NMFS would require all U.S. vessels harvesting AMLR to use an NMFS approved VMS unit and to participate in C–VMS reporting requirements. At recent CCAMLR meetings, the United States has proposed an amendment to CCAMLR Conservation Measure 10–04 to require krill vessels to use C–VMS but has not yet been able to get CCAMLR to adopt such a measure.

Center for Biological Diversity (CBD) and Turtle Island Restoration Network (TIRN) Comments. The CBD and TIRN state that they support the proposed changes for the most part, but have raised concerns with several proposed changes regarding the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Migratory Bird Treaty Act (MBTA). Their comments on the proposed regulations incorporate by reference their comments on the Draft Programmatic Environmental Impact Statement on Codified Regulations at 50 CFR part 300 Subparts A and G Implementing Conservation and Management Measures Adopted by the Commission for the Conservation of Antarctic Marine Living Resources (DPEIS), and previous letters to NMFS (dated September 18, 2003, December 31, 2003, and March 22, 2004). Much of the following is a summary of their comments on the DPEIS and NMFS responses taken from the FPEIS for the above referenced DPEIS. Notice of availability of the FPEIS was published by the Environmental Protection Agency

in the November 24, 2006, issue of the **Federal Register** (71 FR 67864).

Comment 7: CBD/TIRN commented that NMFS must suspend any current authorizations, and not issue any further permits for U.S. flagged vessels to conduct fishing operations in the CCAMLR area, until a final programmatic EIS and biological opinion are completed and NMFS issues an MMPA incidental take authorization for sperm whales.

Response: NMFS conducted the appropriate analyses under NEPA and the ESA and other applicable laws prior to issuing AMLR harvesting permits and HSFCA permits to F/Vs American Warrior, America No. 1, and Top Ocean. In addition, NMFS completed an FPEIS with notice published on November 24, 2006 (71 FR 67864). The FPEIS contains Section 4.7 entitled the ''Endangered Species Act'', which summarized conclusions of the NMFS programmatic Section 7(a)(2) consultation, examining the effects of the management regime on listed species. NMFS also completed a programmatic biological opinion on March 28, 2006, which included consultation on the issuance of fishing permits by NMFS under the Antarctic Marine Living Resources Convention Act of 1984 (AMLRCA). The most recent permit that NMFS issued for a U.S. flagged vessel to conduct fishing operations in the CCAMLR Convention Area (F/V Top Ocean to harvest krill) expired November 30, 2005. F/V Top Ocean conducted commercial trawl operations for krill in the early months of 2005 and there has been no U.S. fishing in the Convention Area since then.

In terms of NMFS issuing an MMPA incidental take authorization for sperm whales, no sperm whale mortalities by U.S. vessels have occurred and no takes of sperm whales by U.S. vessels are anticipated or authorized. No U.S. vessels have been longlining for toothfish in the Convention waters since 2004.

Comment 8: CBD/TIRN believes that NMFS did not circulate the DPEIS widely enough, did not issue a stand-alone **Federal Register** notice, and did not describe how an interested member of the public could get a copy of the document. CBD/TIRN believes that NMFS did not provide the public with sufficient notice of the availability of the DPEIS for public comment and, therefore, NMFS must recirculate the DPEIS for public comment before relying on it for the proposed rule.

Response: NMFS provided EPA with the DPEIS and requisite information for EPA to publish a notice of availability in the **Federal Register** as required by CEQ regulations. Publication of the DPEIS in the **Federal Register** (70 FR 38132), along with distribution to the mailing list contained in the DPEIS, meets the Federal action agency responsibility for providing public notice and invitation for public comment under the CEQ regulations. In addition, NMFS posted notice of publication of the DPEIS, along with the DPEIS, on its Web site at several locations (*http://www.nmfs.noaa.gov/sfa/domes_fish/new_of_note.htm*).

Comment 9: CBD/TIRN believes that the DPEIS fails to analyze the likely cumulative impacts of fisheries-related mortality to threatened seabirds (primarily albatrosses and petrels) from longline and trawl fishing in their ranges. They assert that the role of U.S. longline and trawl vessels, combined with other nations' legal and illegal longline toothfish vessels, must be looked at cumulatively for their impacts on seabirds in order for the FPEIS to comply with NEPA.

Response: Table 7 of the DPEIS and the FPEIS lists the conservation status of seabirds defined by the U.S. government (i.e., Endangered Species Act listing status), CCAMLR and the International Union for the Conservation of Nature (IUCN). Table 21 of the DPEIS and the FPEIS lists the types of seabirds interacting with CCAMLR fisheries and highlights the 20 species identified by CCAMLR's Working Group on Incidental Mortality Associated with Fishing (WG–IMAF) as most at risk from fisheries interactions. NMFS cites peer-reviewed scientific publications that document the impact of fisheries on specific populations. Unlike ESA listing status and criteria, the IUCN listings do not connote any prescribed or specific actions or measures under U.S. law. The IUCN criteria do provide a basis for common understanding of global species and they have been used in that context in both the DPEIS and the FPEIS.

The environmental consequences section of both the DPEIS and the FPEIS analyzes the anticipated impacts of each individual action on seabirds. The cumulative impacts section of both the DPEIS and FPEIS addresses impacts on seabirds. Potential cumulative impacts on these seabird species include: U.S. vessels fishing in CCAMLR regulated fisheries, other CCAMLR member vessels fishing in CCAMLR regulated fisheries, IUU vessels fishing within the CCAMLR and adjacent areas, and regulated fishing activities occurring in adjacent areas under the jurisdiction of other Regional Fishery Management Organizations (RFMOs). CCAMLR's ad hoc WG–IMAF and CCAMLR's Working Group on Fish Stock Assessment (WG–FSA) have discussed potential effects of bycatch levels and rates on seabird populations, particularly threatened and endangered species (as defined under IUCN). The groups noted the current lack of appropriate demographic models and the lack of reliable data on mortality rates of the relevant seabird species in longline and trawl fisheries outside the Convention Area and in IUU fisheries generally. Without this information, it is difficult, if not impossible, for NMFS to conduct a complex quantitative analysis of the cumulative impacts to seabirds from longline and trawl fisheries outside the Convention Area and in IUU fisheries. Even without these detailed analyses, CCAMLR has taken the approach (as the United States has in the Hawaii and Alaska longline fisheries) to minimize/reduce the bycatch of seabirds that occurs by requiring effective mitigation, including gear type and usage requirements and time-area closures, among other measures. The United States implements these measures and they help mitigate the impacts on seabirds.

The DPEIS and FPEIS note that trade and enforcement control measures are anticipated to minimize the import of IUU fish into the United States; this should result in the United States contributing negligible amounts to the cumulative impact on seabirds from both fishing and import activities.

The impacts of fisheries-related mortality on seabird species were fully analyzed using the available data. NMFS notes that in the regulated CCAMLR longline fishery, the seabird bycatch levels are extremely low, 0.0011 birds/1000 hooks in Subarea 48.3 in 2005, for instance. Consequently, the regulated fishery contributes a negligible amount to seabird mortality. The only remaining bycatch problems in the longline fishery are in the French EEZ and in IUU fishing within the Convention Area. The impact of U.S.-permitted vessels in the regulated longline fisheries on seabird bycatch is so small that it does not contribute to cumulative impacts on seabirds.

Comment 10: CBD/TIRN believes that the DPEIS fails to adequately analyze the impacts on marine mammals, particularly on a form of killer whale that specializes in eating toothfish and on Antarctic fur seals being caught and killed in the trawl fishery for krill.

Response: Given recent observations that there likely is a form of killer whale in the Southern Ocean that preys primarily on toothfish (so-called Type C) (p. 106 and p. 186 of FPEIS), any fishery for toothfish has the potential to produce negative impacts on this form.

These recent observations come primarily from National Science Foundation sponsored research conducted by scientists from the NMFS, Southwest Fisheries Science Center, and research is still ongoing. Information on distribution of this fish-eating form suggests they occur primarily in East Antarctica. Their abundance is not known. CCAMLR produces regional quotas for toothfish take which allow considerable escapement for toothfish stock availability to satisfy ''predator demand'', and CCAMLR considers this sufficient for the foraging needs of these fish-eating killer whales. There remains the possibility of local conflicts, if, for example, a toothfish fishery expanded in areas in East Antarctica where this form of killer whale occurs. If this becomes a matter of serious concern, it will be necessary to conduct directed research on the distribution, abundance and other characteristics of these ''Type C'' killer whales. This information could then be used by CCAMLR in the same manner that krill demand by localized populations of pinnipeds and birds is used, to set appropriate local quotas for commercial harvest. In the absence of such specific data, CCAMLR's precautionary catch limits for toothfish can be taken to leave sufficient food for this form of killer whale.

As for Antarctic fur seals being killed in krill trawls, this final rule would require any U.S. krill harvesting vessel, using trawl gear in Convention Area fisheries, to install a seal excluder device. The bycatch of Antarctic fur seals by the single U.S. krill harvester and by foreign vessels in the Convention Area, the use of seal excluder devices, and the increasing population trend in Antarctic fur seals is discussed in both the DPEIS and the FPEIS.

Comment 11: CBD/TIRN commented that the analysis of the global toothfish fishery and trade in toothfish should be expanded, and reduced catch and the decline of the toothfish population should be the focal point of the DPEIS.

Response: While the DPEIS acknowledges that ''where reliable data exist, reduced CPUE and clear population declines have been shown'', this primarily applies to the Indian Ocean sector of the Convention Area that exhibits high levels of IUU, and not areas where IUU is negligible, such as South Georgia. In areas where IUU has been minimal and CCAMLR TACs have been adhered to, there is little evidence of substantial population declines of toothfish stocks over the last decade. The source for this information is the 2005 CCAMLR Report of the Scientific Committee (SC–CAMLR–XXIV(2005)). NMFS believes the analysis of the toothfish fishery and trade in the FPEIS is sufficient.

Comment 12: CBD/TIRN commented that a major NEPA deficiency of the DPEIS was the failure to analyze the environmental consequences of U.S. importation and consumption of toothfish on toothfish stocks and on species incidentally caught in the toothfish fishery (e.g., seabirds and marine mammals). CBD/TIRN further commented that the DPEIS should have included an alternative in which toothfish imports were banned entirely until and unless bycatch could be reduced and toothfish stocks recovered.

Response: The DPEIS did consider the current regulatory provisions to control harvest and trade (particularly importation into the United States) of toothfish and alternatives. NMFS did prepare analytical documents for the Catch Documentation Scheme and pre-approval, etc. regulations promulgated in 2000 and 2003 to control trade in toothfish and prevent importation into the United States of IUU toothfish. Although there are some uncertainties associated with the CCAMLR methodology for estimating IUU catch, the CCAMLR estimates show that IUU fishing has continued to decline by significant amounts over the past five years.

As a result of both the substantial decrease in estimated IUU fishing and the efforts by CCAMLR to improve its methodology for estimating IUU fishing, NMFS believes that a ban on U.S. imports of toothfish is neither warranted nor necessary. In addition, the United States strictly regulates the importation of toothfish. As a result of announcing its intention to restrict imports of toothfish to shipments documented with E–CDS, the following countries are now using E–CDS exclusively in importing into the United States: Australia, Japan, Korea, New Zealand, Russia, South Africa, Spain, Ukraine, United Kingdom (overseas territories) and Uruguay. Chile and France are part time users of E–CDS, while Peru and Argentina are not using E–CDS in importing toothfish into the United States. This final rule will require all toothfish shipments to the United States to be documented electronically making it even more unlikely that IUU fish will enter the United States.

In 2003, NMFS, based upon advice of CCAMLR's Scientific Committee (SC) and after consultation with the Office of the United States Trade Representative, banned all imports of toothfish from Areas 51 and 57. These areas, immediately north of the CCAMLR Convention Area in the Indian Ocean, were identified on catch documents as the location of large amounts of toothfish catch. Based upon the bathymetry of the area, fishable habitat and the behavior of toothfish, the SC expressed its serious misgivings that Areas 51 and 57 could support toothfish populations in the numbers being reported on catch documents. The SC concluded that the catches attributed to Areas 51 and 57 outside the CCAMLR Convention Area were much more likely to be IUU catches taken from within the nearby Convention Area. Following the ban, catch documents attributing catch of toothfish to Areas 51 and 57 dropped to very small amounts.

Because the United States believes a ban on all toothfish imports is not appropriate or warranted, NMFS did not consider it as a viable alternative. Annually, the United States participates in setting the area-wide catch limits and other conservation measures designed to protect toothfish stocks in CCAMLR's international forum. Fishing by all countries and IUU fishing is taken into account as CCAMLR adopts annual catch limits and other restrictions on harvest and trade. Imports into the United States are controlled to prevent importation of IUU toothfish. A ban on toothfish imports into the United States would penalize U.S. consumers and other businesses and would not prevent IUU fishing as toothfish harvest would find other markets.

Comment 13: CBD/TIRN commented that the DPEIS fails to address the human health impacts from the consumption of toothfish in the United States. They cite a 2003 survey conducted by the San Francisco Chronicle that concluded that toothfish for sale in U.S. markets contained unsafe levels of mercury. The commenter also stated that the U.S. Food and Drug Administration (FDA), the Department of Health and Human Services (HHS), and the Environmental Protection Agency (EPA) have all tested toothfish for mercury and detected numerous samples with over twice the lawful limits. CBD/TIRN asserted that any NEPA document addressing a regulatory scheme for the importation of seafood products containing high levels of mercury must disclose and analyze these health effects, the societal costs from such effects, and the environmental and health benefits of prohibiting the importation of such a tainted product. The commenter concluded that failure to disclose and analyze these health effects renders the DPEIS infirm.

Response: The issue raised by the commenter concerning the health effects of imported seafood products is beyond the scope of what NMFS analyzed in the

FPEIS for this action. The FDA and the EPA have expertise and responsibility to determine human health impacts from the consumption of toothfish and other seafood. They currently have the capability of testing any species for mercury content and do not allow seafood products exceeding 1 ppm to enter into commerce of the United States. Both the FDA and EPA make the decisions about public health implications of mercury in fish, and to our knowledge, the U.S. government has never banned imports or sale of any particular species of fish due to mercury content. Alternatively, the government has issued advisories on which fish are not safe to eat or which fish are safe to eat only in smaller quantities.

Comment 14: CBD/TIRN commented that the DPEIS is deficient in its review of the current and projected future impacts of climate change on the Antarctic ecosystem. CBD/TIRN commented that significant information on impacts of climate change on krill availability have been published but the DPEIS did not analyze this in either the baseline or cumulative effects. The commenter cited a 2004 article by Atkinson et al., ''Long-term decline in krill stock and increase in salps within the Southern Ocean'' published in Nature: v432: No 7013, p. 100; and a 2004 article by Marris, ''Climate change clouds commercial licence to krill'' published in Nature: v432: No 7013, p. 4.

Response: The proposed regulations and the related portions of the DPEIS and FPEIS consider changes to regulations governing the harvesting of AMLR and trade in AMLR. The proposed requirements impact fishermen and dealers and only indirectly impact the Antarctic ecosystem. The current and projected future impacts of climate change on the Antarctic ecosystem are on a broad scale with global impacts.

The commenter is concerned about the availability of krill for harvest, but the proposed regulations do not advance any change in the amount of krill that can be harvested, only that U.S. flagged krill trawlers must use a seal excluder device, carry scientific observers, and participate in C–VMS. The U.S. AMLR program conducts an annual survey of krill in the Antarctic Peninsula region, and each survey provides information on abundance, availability, recruitment, dispersion, and other important data. This information is presented at CCAMLR, and forms much of the scientific basis for the precautionary catch limits now in force. The actual catch of krill by all fishing nations combined is (and has been) considerably less than the precautionary limit. If future U.S. AMLR surveys indicate a collapse of krill stocks due to climate change or some other possible mechanism, this will be reported to CCAMLR and precautionary catch limits will be adjusted accordingly, or the fishery potentially shut down. Although there are long term trends in krill abundance that have been detected, the overall biomass of krill in the Southern Ocean remains at a level that the impact of human harvest has been inconsequential.

Comment 15: The commenter cited inconsistent discussion in the DPEIS at pages 187 and 257 regarding sperm whale interactions with toothfish vessels and possible mortalities.

Response: NMFS corrected text at page 187 of the FPEIS by deleting the annotation: ''The observer noted two possible sperm whale mortalities.'' Upon rechecking observer reports and the reports of CCAMLR WG-IMAF, NMFS has confirmed that there have been no reported sperm whale mortalities in the entire history of the CCAMLR toothfish fishery (which has 100% observer coverage). However, NMFS notes that there are anecdotal reports of sperm whale mortalities in toothfish fisheries in waters outside the Convention Area. The observer report referred to on page 187 of the DPEIS states that the observer had seen encounters between sperm whales and toothfish longlines on numerous occasions over the course of 4 years as an observer, but he never witnessed any incident that threatened the well being of the whales. In his discussions with other observers, they reported similar experiences. The observer continued by saying in his report (2004 Report by CCAMLR observer on board a U.S. longline vessel) ''considering the total number of longliners fishing for Dissostichus species in CCAMLR waters and the extremely low (possibly only two) incidents of whale mortality during the past 5 years, the real threat to whales is statistically negligible.'' The observer's annotation comment was directed at the entire fleet fishing inside Convention waters over the preceding 5 years (August 2000 to 2004) rather than his observation of the U.S. longline fishing trip he was observing.

Based on the fact that there have been no sperm whale mortalities in the U.S. or entire CCAMLR fisheries, NMFS believes its FPEIS corrects the ambiguity caused by the inconsistent language in the DPEIS regarding the impact of the toothfish fishery on sperm whales.

Comment 16: CBD/TIRN commented that little of the information in a recent article on marine mammal interactions with longline fisheries in the Southern Ocean, documenting interactions, entanglements, and deaths of sperm whales and orcas, was discussed in the DPEIS. The commenter cited a 2006 article by Kock et al, ''Interactions Between Cetacean and Fisheries in the Southern Ocean'' published in Polar Biology: 29:379–388.

Response: It is true that there have been documented interactions between longline fisheries and orcas and sperm whales in the Southern Ocean. However while Kock et al (2006) describe gear interaction with orcas and male sperm whales, it is restricted to observations of large numbers of fish taken off longlines by cetacean foraging (depredation), as well as cases of sperm whale entanglements in the lines, and loss of lines. There is nothing in Kock et al (2006) that indicates any observations of orcas or sperm whales having died as a result of longline fisheries in the Southern Ocean.

Comment 17: CBD/TIRN asserted that further authorization of any longline fishing in CCAMLR waters would violate the ESA and MMPA, and that NMFS's issuance of AMLRCA and HSFCA permits to two U.S. flagged longline vessels violated Section 7 of the ESA, 16 U.S.C. 1536(a)(2). CBD/TIRN commented that it appears NMFS violated Section 9 of the ESA as well, 16 U.S.C. 1538, given the information on ''possible sperm whale mortalities'' from one of these vessels contained in the DPEIS. CBD/TIRN went on to say that while NMFS may be able to correct its Section 7(a)(2) violation with a programmatic biological opinion that addresses the entirety of the agency action (i.e.≤ the regulations and all authorized fishing activity), they believe that Section 9 precludes the agency from issuing any further permits to toothfish longline vessels until and unless NMFS receives authorization for such take pursuant to both the ESA and MMPA.

Response: As NMFS explained in its response to Comment 15, there have been no sperm whale mortalities reported in the CCAMLR fisheries. Moreover, NMFS is unaware of any sperm whale mortality caused by a U.S. toothfish vessel. Furthermore, in its March 28, 2006, ''Endangered Species Act Section 7 Consultation Biological Opinion on the Proposed Regulatory Program Implementing Conservation and Management Measures Adopted by the Commission for the Conservation of Antarctic Marine Living Resources'', NMFS concluded that the regulatory regime for CCAMLR (subject of the FPEIS) is not likely to jeopardize the continued existence of endangered

whales (including sperm whales), and that the proposed action may affect but is not likely to adversely affect endangered and threatened sea turtles.

Comment 18: CBD/TIRN pointed out that under Section 101(a)(5)(E) of the MMPA, NMFS can in certain circumstances authorize the incidental take of ESA-listed marine mammals. CBD/TIRN believes that until and unless NMFS issues an authorization under Section 101(a)(5)(E), no take of sperm whales may be allowed. The commenter asserts that because authorization of toothfish longlining will lead to such take, NMFS cannot lawfully authorize such fishing whether it be by permit or regulation. As such, CBD/TIRN comments that NMFS should promulgate regulations banning all such longlining.

Response: As indicated in the responses to Comments 15 and 17, there is no reported sperm whale mortality associated with U.S. toothfish vessels. No takes are anticipated or authorized.

Comment 19: CBD/TIRN stated that longline fisheries for toothfish will kill birds protected under the MBTA. Citing several cases and authorities, CBD/TIRN asserted that, until such take is permitted, NMFS cannot lawfully allow any fishing that is likely to result in the death of such species. CBD/TIRN further asserted that the MBTA applies beyond the territorial sea of the United States.

Response: The MBTA only applies in nearshore waters, seaward to three nautical miles (nm) from the shoreline of the United States. Since the longline fishery for toothfish operates outside three nm, any take of migratory birds incidental to the fishery would not be covered by the MBTA.

Comment 20: CBD/TIRN commented that the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. 701 *et seq.*), and their implementing regulations also apply to the harvesting and importation of AMLRs. 50 CFR 300.102(c). CBD/TIRN stated that any new conclusion to the contrary will not survive legal scrutiny.

Response: In the response to Comment 19, NMFS has stated its opinion that the MBTA only applies in nearshore waters, seaward to three nautical miles (NM) from the shoreline of the United States. The ESA does apply to the harvesting and importation of AMLRs and NMFS conducted a Section 7 consultation for this action. Moreover, NMFS has not prepared a Take Reduction Plan for whales in the Southern Ocean because there have been no takes of sperm whales in the longline fishery in the Convention Area.

Comment 21: CBD/TIRN raised their concern that under NMFS' current practice, NMFS has issued, and will continue to issue permits to individuals and entities that have been associated with illegal fishing or illegal importation of toothfish. NMFS's knowing facilitation of this illegal fishing runs completely counter to the spirit and letter of AMLRCA, the HSFCA, and the treaties these statutes were intended to implement. In scoping CBD/TIRN requested that the DPEIS should specifically analyze whether any changes to NMFS's current regulations are necessary to prevent a recurrence of such a scenario. CBD/TIRN commented that the DPEIS and the proposed regulations show little sign that NMFS is serious about complying with its international obligations to reduce IUU fishing. CBD/TIRN believes that the proposed regulations likewise do little to prevent a recurrence of such an egregious scenario.

Response: NMFS lawfully issued AMLR harvesting permits to the owner of the vessels cited by the commenter. The two CCAMLR observers on board these vessels reported no illegal activity while these vessels were fishing. NMFS' goal of eliminating IUU fishing was furthered by the issuance of the permits in accordance with all applicable laws and regulations to the U.S.-flagged vessels. By asserting its control over the vessels' permit to fish, NMFS was able to ensure compliance with CCAMLR conservation measures by the vessels owner and operators. During the period that the vessels were U.S. owned and flagged, NMFS observed no illegal activity surrounding the operation of either vessel through close monitoring by NOAA-authorized observers, NOAA/NMFS for Law Enforcement, and the NOAA vessel monitoring system.

The final rule combined with additional statutory authorities (including proposed amendments to AMLRCA), are sufficient to ensure that U.S. flagged vessels and U.S. nationals can be effectively prosecuted for illegal fishing operations and trafficking of IUU fish product. NOAA/NMFS is seeking to amend AMLRCA at the next opportunity to increase the maximum civil penalty allowed under AMLRCA to ensure that NOAA/NMFS's penalty options will be sufficient to address all violations. NOAA/NMFS will continue to cooperate with foreign governments to identify and pursue enforcement actions against foreign companies and foreign nationals that are identified as IUU fishers or participants in illegal trafficking of IUU fish product.

Comment 22: CBD/TIRN believes the C–VMS, scientific observer, and seal excluder device requirements should apply to all U.S. flagged vessels fishing for toothfish even if they are outside of the CCAMLR Area (i.e., not fishing for AMLR under the proposed definitional change). If need be, NMFS should implement this requirement pursuant to its authority under the HSFCA in addition to AMLRCA to ensure applicability wherever these vessels fish.

Response: This final rule requires U.S. vessels harvesting AMLR in the Convention Area to operate C–VMS on board from the time of leaving port to the time of returning to port, consistent with AMLRCA. The seal excluder devices and observer requirements are also required for U.S. vessels harvesting AMLR in the Convention Area, consistent with AMLRCA. This requirement will not apply to U.S. flagged vessels which do not have an AMLR harvesting permit and which are fishing for toothfish outside the Convention Area. NMFS is considering the development of regulations to amend its HSFCA regulations to, among other things, require VMS usage for all U.S. flagged vessels fishing anywhere on the high seas.

Comment 23: CBD/TIRN opposes the exemption of ''small artisanal boats'' fishing in the EEZs of Chile or Peru from the C–VMS requirement. The commenter believes that these countries do not effectively regulate IUU fishing and that allowing such imports opens the door for fraud as fish illegally caught elsewhere can be labeled as having been caught by such vessels operating in such a manner. Additionally, the commenter stated that the regulations do not define ''small artisanal boats.''

Response: NMFS has provided its rationale for this exemption in the preambles to the proposed regulation and this final regulation. U.S. dealers seeking to import toothfish or toothfish products originating from small artisanal boats fishing in the EEZ of Peru or Chile will not have to possess information documenting the use of C–VMS by such artisanal boats. NMFS exempts such dealers because of the small size of these artisanal boats and their inability to navigate beyond the EEZ. Chile regulates fishing by regions within its EEZ and artisanal boats do not operate in the same regions as large freezer vessels. NMFS does not believe a definition of ''small artisanal boats'' is necessary and wants to maintain flexibility in applying this exemption to vessels incapable of navigating beyond the EEZ.

As artisanal boats harvesting and shipping small amounts of fresh fish are not equipped to reach CCAMLR restricted areas, they are not suspected of this type of infraction. Also, pursuant to a bilateral agreement with Chile, NMFS has a real time verification process for shipments of toothfish harvested by Chile's artisanal toothfish fishery. Under the final rule, DCDs for shipments of fresh toothfish from Chile will be reviewed without a fee-for-service charge. Shipments of all frozen toothfish, including those in quantities of less than 2,000 kg, will still require preapproval.

Comment 24: CBD/TIRN commented that the DPEIS did not analyze the environmental effects of exemptions discussed above in Comments 22 and 23 and believes that absent such an analysis, NMFS cannot claim that the impacts will not be significant.

Response: As explained in its response to Comment 22, AMLRCA does not provide NMFS with the authority to regulate fishing for toothfish outside of the CCAMLR Convention Area. If NMFS were to propose a requirement under the HSFCA that all U.S. flagged vessels fishing for toothfish wherever found must use VMS, then NMFS would need to amend its HSFCA regulations and conduct applicable environmental and socio-economic analyses. As indicated in its response to Comment 23, imports of toothfish harvested by ''small artisanal boats'' in the EEZs of Chile and Peru consist primarily of small quantifies of fresh toothfish. In addition, pursuant to a bilateral agreement with Chile, NMFS has a real time verification process for shipments of toothfish harvested by Chile's artisanal toothfish fishery. Therefore, NMFS believes there to be at most only a negligible risk of IUU toothfish being imported as harvested from either the Chilean or Peruvian artisanal fishery.

Comment 25: CBD/TIRN believes that shortening portions of the preapproval requirement from 15 days to 3 days will greatly reduce NMFS's opportunity to investigate the shipment of toothfish to verify its legality. They also believe that exempting all fresh toothfish would open the door for further fraud. CBD/TIRN believes the preapproval provisions should be broadened to apply to all shipments of toothfish, whether frozen or fresh. The commenter believes the proposed changes will weaken NMFS's oversight and increase the likelihood of illegally caught toothfish being imported into the United States. Also, CBD/TIRN asserts that because the DPEIS does not analyze the environmental effects of including these exemptions in the regulations, NMFS cannot claim that the impacts will not be significant.

Response: NMFS's only change requires that dealers supply the U.S. Customs 7501 number at least 3 working days prior to a frozen or fresh toothfish shipment's arrival instead of at least 15 days as currently required. All other information on the ''Application for Preapproval of Catch Documents'' would remain unchanged enabling NMFS to verify and validate all other information pertaining to each shipment. In most cases dealers are not able to obtain a U.S. Customs 7501 number 15 days in advance of a shipment's arrival. NMFS disagrees that shortening the 15-day advance notification period to a 3-day advance notification period will greatly reduce NMFS's opportunity to investigate the shipment to verify its legality, because all information needed to verify and validate a shipment of toothfish for entry will still be required 15 days in advance. NMFS uses the 7501 numbers to perform a post entry confirmation and to perform compliance analysis for enforcement purposes. NMFS also disagrees that exempting shipments of fresh toothfish over 2,000 kgs from the preapproval system will open the door for fraud and will facilitate smuggling into the United States. Exempting fresh shipments above 2,000 kg encompasses only about 2 percent of all toothfish entering the United States. These shipments must be reported within 24 hours of import, just as all fresh shipments of 2,000 kg or less have been reported since the inception of the preapproval process. These documents are then checked for validity. None of the enforcement cases involving illegal imports have involved fresh product.

The proposed rule recognizes that most dealers are unable to comply with the current requirement to submit the Customs 7501 number 15 days prior to the shipment's arrival. Therefore, NMFS is now requiring the submission of this form at least 3 working days prior to the shipment's arrival and no environmental impacts are anticipated. In addition, because the customs number is not necessary for verifying and validating the shipment of toothfish, but rather as a tool in retrospective compliance analysis, NMFS does not expect this change to result in any increase in shipments of IUU toothfish.

Because shipments of fresh toothfish in excess of 2,000 kg constitute less than two percent of toothfish shipments and because these shipments still must be reported within 24 hours and documented, NMFS anticipates no increase in imports of IUU toothfish as a result of this change.

Comment 26: CBD/TIRN supports the requirement for electronic catch documents.

Response: As indicated in its response to Comment 2, NMFS believes the requirement to use electronic DCDs for toothfish imports will effectively guard against importation of IUU toothfish with forged paper documentation.

Comment 27: CBD/TIRN supports the proposed rule's provisions governing the use of scientific observers. They also believe that such requirements should be applied to all U.S. flagged vessels fishing for toothfish even if fishing outside of the CCAMLR area. CBD/TIRN states that, if need be, NMFS should implement this requirement pursuant to its authority under the HSFCA in addition to AMLRCA to ensure consistency in the regulations.

Response: As indicated in its response to Comment 22, AMLRCA does not provide NMFS with the authority to regulate fishing for toothfish outside of the CCAMLR Convention Area. Instead, NMFS is considering the development of regulations to amend its HSFCA regulations and, if such a rulemaking is undertaken, the public will be given an opportunity to comment.

Comment 28: CBD/TIRN supports the proposed rule's provisions requiring U.S. flagged vessels trawling for krill in the CCAMLR Convention Area to use seal excluder devices. The commenter also believes that this requirement should be applied to all U.S. flagged vessels fishing for krill even if fishing outside of the CCAMLR area. CBD/TIRN states that, if need be, NMFS should implement this requirement pursuant to its authority under the HSFCA in addition to AMLRCA to ensure consistency in the regulations.

Response: The final rule requires seal excluder devices on all U.S. vessels trawling for krill in CCAMLR Convention Area fisheries; however, NMFS does not believe it has the authority under AMLRCA to regulate trawling for krill outside of the CCAMLR Convention Area. NMFS is considering the development of regulations to amend its HSFCA regulations and, if such a rulemaking is undertaken, the public will be given an opportunity to comment.

Comment 29: CBD/TIRN commented that NMFS must take all necessary measures to ensure that the krill trawl fishery reaches the Zero Mortality Rate Goal (ZMRG) required by the MMPA. They assert that because NMFS has not calculated Potential Biological Removal (PBR) for the affected stocks, NMFS cannot be certain that the fishery is in

compliance with the ZMRG requirement. They also comment that the DPEIS does not analyze this factor. CBD/TIRN comments that until and unless NMFS can ensure compliance with the MMPA, NMFS cannot lawfully issue any AMLRCA harvesting permits for the krill fishery.

Response: For a fishery to reach the Insignificance Threshold, or the target level of incidental mortality and serious injury under the ZMRG, annual incidental serious injury and mortality of a marine mammal stock in a given fishery must be below 10% of PBR (50 CFR 229.2). NMFS does not have sufficient information to calculate PBR level for marine mammal stocks found outside of the U.S. EEZ. The relative abundance of Antarctic fur seals was estimated as 1.5 million in 1990 and is thought to have since increased to over 4 million (CCAMLR Final Programmatic EIS). In 2003/2004, a total of 158 Antarctic fur seals were observed taken by the single U.S. permitted trawl krill fishing vessel in the CCAMLR region, 142 of which were mortalities. As a result, a permit provision was added requiring the use of a seal excluder device and any other gear modifications or fishing practice that reduces or eliminates Antarctic fur seal bycatch. In the 2004/2005 fishing season the U.S. vessel used the required seal excluder device and as a result 24 Antarctic fur seals were incidentally taken, 16 of which were mortalities (2005 Report of the CCAMLR SC). This vessel did not fish in the CCAMLR region in the 2005/2006 fishing season and has not applied at this time to fish during the 2006/2007 season. The vessel has indicted that should it fish again for krill in the CCAMLR Convention Area it will further modify the seal excluder device to address the problems identified by the CCAMLR SC. This modification would be a requirement of any permit NMFS would issue to the vessel.

Given the large estimated abundance of Antarctic fur seals, the current low rate of incidental serious injury and mortality would likely be below 10% of PBR. Therefore, NMFS can confidently assume that the fishery is in compliance with the Insignificance Threshold, or ZMRG. Further, at the 2006 Antarctic Treaty Consultative Meeting, the Antarctic Treaty Parties delisted the Antarctic fur seal from its list of Specially Protected Species. The delisting reflected the much increased abundance of fur seals. Even with this increased abundance, only 95 fur seals were reported caught during fishing operations in 2005/2006, during which time no U.S. krill trawl vessel was operating.

Comment 30: CBD/TIRN commented that the proposed change to the definition of ''Antarctic Marine Living Resources'' (''AMLRs'') would allow toothfish harvested outside of the CCAMLR area to be harvested by U.S. vessels without an AMLRCA permit. CBD/TIRN believes that NMFS has authority under AMLRCA to require such permits for ''all species of *Dissostichus* wherever found'' and the change in definition would open the door for fraud and facilitate IUU fishing by U.S. flagged vessels. Additionally, the commenter requested that if NMFS proceeds with this regulatory change, that NMFS should simultaneously promulgate regulations pursuant to the HSFCA that apply all the same provisions as under AMLRCA to all U.S. flagged toothfish vessels to ensure consistency in the management and harvest of toothfish and to prevent fraud.

Response: While the proposed and final rule would not require an AMLRCA permit to harvest toothfish on the high seas wherever found, any U.S. vessel fishing for toothfish outside the CCAMLR Convention Area would be required to have a permit issued by NMFS under the HSFCA. NMFS disagrees that the regulatory change in the definition of ''AMLRs'' would open the door for fraud and facilitate IUU fishing by U.S. flagged vessels. The final rule preserves the requirement that all imports of toothfish, wherever harvested, comply with U.S. import permit conditions and DCD controls.

Comment 31: CBD/TIRN commented that NMFS's statement that ''areas within the Convention Area subject to national jurisdiction, such as the areas * * * claimed by the United Kingdom, are not considered high seas areas'' needs clarification. The commenter points out that various U.S. statutes apply to the ''high seas'' and that for many of these statutes the ''high seas'' includes all areas outside of the territorial waters of other nations. CBD/TIRN states that NMFS must clarify that AMLRCA, the ESA, MMPA, NEPA, and other relevant statutes apply to U.S. flagged vessels fishing in these areas even if they are claimed by other nations as part of that nation's EEZ. Further, CBD/TIRN comments that the DPEIS does not analyze the environmental effects of making this change in the regulations and without such an analysis, NMFS cannot claim that the impacts will not be significant.

Response: In the proposed rule, NMFS stated that the ''[a]reas within the Convention Area subject to national jurisdiction, such as the areas in Convention Subarea 48.3 claimed by the United Kingdom, are not considered high seas areas.'' 71 FR 39642 (July 13, 2006). By this statement, NMFS meant that these areas are not considered high seas for purposes of the HSFCA. Therefore, NMFS would not issue any HSFCA permits to U.S. vessels wishing to fish in such areas.

Comment 32: CBD/TIRN has no objection to the proposed regulatory provisions requiring information on harvesting vessels.

Response: NMFS expects this information on harvesting vessels will assist in data collection, management decisions, and aid in enforcement.

Changes From the Proposed Rule

The proposed rule had provided for a 60-day period for dealers to transition to the use of E–CDS. NMFS has concluded that the 30-day delay in effectiveness for the final rule under the Administrative Procedure Act provides sufficient time for this transition.

For purposes of clarification, NMFS made some non-substantive changes to the wording of application requirements for dealer permits under § 300.114(b).

Also for clarification purposes, NMFS made a slight change in the definition of ''national observer'' in § 300.101. Similarly, NMFS revised § 300.113 to ensure that the public understood that this section on scientific observers applies to national and international observers as defined in § 300.101.

Classification

The Act

The Assistant Administrator for Fisheries, NMFS, determined that this final rule is consistent with the Antarctic Marine Living Resources Convention Act of 1984, codified at 16 U.S.C. 2431 *et seq.*

National Environmental Policy Act

A ''Final Programmatic Environmental Impact Statement on Codified Regulations at 50 CFR part 300 Subparts A and G Implementing Conservation and Management Measures Adopted by the Commission for the Conservation of Antarctic Marine Living Resources'' was prepared by NMFS and published on November 24, 2006 (71 FR 67864). It discusses the impact on the natural and human environment of the actions taken in this final rule. The Record of Decision (ROD) for the FPEIS was signed by the Assistant Administrator for Fisheries, NMFS, on May 25, 2007, and is available to the public (see **ADDRESSES**).

Regulatory Flexibility Act

NMFS announced that it had prepared an Initial Regulatory

Flexibility Analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act, to describe the economic impacts the proposed regulation may have on small entities. No comments were received from the public on the IRFA or the economic impacts of the proposed rule. NMFS has now prepared a Final Regulatory Flexibility Analysis (FRFA), as required by section 603 of the Regulatory Flexibility Act, to describe the economic impacts this final rule may have on small entities. Small entities within the scope of this final rule include individual U.S. vessels and U.S. dealers (importers and re-exporters). NMFS intended the analysis to aid in the consideration of regulatory alternatives that could minimize the economic impact on affected small entities.

Summary of FRFA

A description of the reasons for, the objectives of, and the legal basis for this final rule is contained in its preamble and in the preamble to the proposed rule and is not repeated here.

A summary of the significant issues raised by public comments is contained in the preamble and not repeated here.

Description of the Number of Entities

During the past several years, there have been 5 vessels (2 for toothfish, 2 for krill, and 1 for crab) and 80 dealers who could fall within the scope of this final regulation. All U.S. vessels and U.S. dealers are considered small entities under the ''Small Business Size Regulations'' established by the Small Business Administration (SBA) under 13 CFR 121.201. There are no disproportionate impacts between large and small entities since all affected businesses are considered small entities by SBA standards.

Reasons for Selecting Alternatives Adopted and Description of Recordkeeping, Reporting, or Compliance Requirements

1. *Centralized VMS.* CCAMLR adopted Conservation Measure 10–04 to implement C–VMS. In implementing Conservation Measure 10–04, NMFS considered two alternatives: The final rule (preferred alternative) and the status quo (no-action) alternative. The preferred alternative would require NMFS and U.S.-flagged vessels fishing for AMLR to participate in C–VMS as established by the CCAMLR Secretariat.

NMFS currently requires both a VMS unit onboard a U.S. vessel (50 CFR 300.107(a)(4)) and reporting of a U.S. vessel's location every four hours (50 CFR 300.107(a)(3)). The preferred alternative does not represent a change in operating procedures for U.S.-flagged vessels currently participating in AMLR fisheries or for U.S. dealers currently importing toothfish shipments into the United States.

Possible benefits resulting from the C–VMS requirement in this final rule may include: Automation of the submission of VMS data to the CCAMLR Secretariat; timely responses from the CCAMLR Secretariat to NMFS's inquiries into fishing activities of a foreign vessel; faster investigations into authenticity of catch documentation; more efficient response time to NMFS's requests for VMS data from flag nations; and freeing agency resources from having to respond to VMS data requests from Contracting Parties.

The following cost estimates assume a single VMS technology: Inmarsat-C (this one is commonly used but there are other VMS technologies). Possible compliance costs to U.S. fishing vessels associated with the preferred alternative include the initial cost of the VMS unit estimated at $2,250 each (includes purchase price and installation; excludes freight); the annual cost of maintenance estimated at $350.00 per year (based on a 5-year life cycle for the equipment); and the annual cost of VMS transmission for a 6-month season, fishing every day, estimated at between $54.00 and $108.00 (based on a per-day charge of $.30 to $.60 per day, depending on the service provider, for 180 days). However, for U.S.-flagged vessels currently participating in AMLR fisheries, no additional compliance costs associated with the final rule are anticipated as such costs have already been realized to comply with requirements at 50 CFR 300.107(a)(4) and (a)(3), respectively. For future participants in AMLR fisheries, compliance costs would include the cost of the VMS unit, freight, installation, maintenance, and the cost per day for a service provider to transmit VMS reports. This transmission cost is estimated at $54.00 and $108.00, as stated above. Transmission of VMS reports to the CCAMLR Secretariat to fulfill the ''centralized'' aspect of this preferred alternative will be made by NMFS and does not represent an additional cost burden to U.S. vessels.

The status quo (no-action alternative) is NMFS's non-participation in C–VMS. Neither current nor future participants in AMLR fisheries will incur additional compliance costs as a direct result of this alternative, nor will these participants incur additional compliance costs as a direct result of the preferred alternative. As stated above, this is due to 50 CFR 300.107(a)(4) and (a)(3), respectively. Regardless of whether NMFS participates in C–VMS (the preferred alternative) or does not participate in C–VMS (the status quo alternative), no net change in economic impacts to U.S. vessels currently participating in AMLR fisheries will occur as a direct result of the final rule. Nonetheless, NMFS rejected the status quo alternative due to the potential benefits associated with C–VMS mentioned above.

2. *Dealer Permits and Preapproval.* The final rule (preferred alternative) tightens and improves the import/re-export control program that the United States maintains for AMLR. The final rule allows U.S. dealers additional time to obtain the 7501 number. This preferred alternative is expected to benefit U.S. dealers by providing a timeframe for the preapproval process that takes into consideration U.S. Customs administrative procedures.

The status quo (no-action alternative) would maintain the existing NMFS requirement that U.S. dealers must submit the 7501 number 15 working days prior to the arrival of a shipment as part of their preapproval application. Currently, U.S. dealers have difficulty complying with this NMFS requirement because U.S. Customs has stated that the 7501 number cannot be issued until it receives all of the required paperwork from the broker—a requirement that is often difficult to meet 15 days prior to the arrival of a shipment of toothfish. Due to the perishable nature of fresh and frozen toothfish, delays associated with the existing preapproval requirements could hinder toothfish shipments from reaching the market in a timely manner, resulting in a lower quality of toothfish product. This delay may further result in lost revenue to U.S. dealers, representing negative economic impacts. Based on the above, NMFS rejected this alternative.

The second part of this preferred alternative exempts all U.S. dealers importing shipments of fresh toothfish weighing more than 2,000 kilograms from preapproval of the DCD requirement. Under current NMFS requirements (the no-action alternative), U.S. dealers who import fresh toothfish shipments of 2,000 kilograms or more must pay the same fee-for-service as U.S. dealers who import frozen toothfish shipments that average 25,000 kilograms. This requirement financially penalizes U.S. dealers importing numerous smaller shipments of fresh product at a $200 fee for each, while U.S. dealers importing frozen product less frequently pay the same $200 fee for their larger shipments. This represents a disproportionate cost to U.S. dealers importing shipments of fresh toothfish

weighing 2,000 kilograms or more relative to U.S. dealers importing frozen toothfish. Though only 4 percent of fresh toothfish shipments weigh 2,000 kilograms or more, and only a small number of U.S. dealers (2 or fewer U.S. dealers) are affected by the current preapproval of DCD requirement, the status quo represents a negative economic impact to these U.S. dealers. The current cost of an estimated 8 preapproval applications for 80 dealers is $128,000. Future costs resulting from the final rule for an estimated 8 preapproval applications for 78 dealers is $124,800. Therefore, because the final rule will likely represent a positive economic impact (decrease in cost) to these 2 or fewer dealers, the status quo was rejected.

3. *Electronic Catch Documents.* The final rule (the preferred alternative) requires that all imports of toothfish be documented using the electronic format recommended by CCAMLR. The final rule increases the security and reliability of catch documents and facilitates the trade of toothfish on behalf of U.S. dealers by decreasing the time needed by NMFS to process approval of shipments. U.S. dealers currently participating in AMLR trade are anticipated to have positive economic benefits associated with this final rule by avoiding costs associated with demurrage charges and delays getting toothfish products into commerce. Additionally, there are no transmission costs to transmit electronic DCDs. The CCAMLR Secretariat maintains a Web site accessible by CDS participants for the transmission of electronic DCDs via the Web. Therefore, there are no anticipated economic costs to U.S. dealers associated with the use of electronic DCDs.

The status quo (no-action alternative) of not participating in electronic DCDs is not anticipated to result in a change in economic impacts for current or future participants in AMLR fisheries. However, NMFS rejected the no-action alternative because electronic DCDs would result in positive economic impacts to U.S. dealers as noted above. NMFS also rejected the no-action alternative because the final rule will enhance the agency's ability to verify the validity of toothfish imports, assuring importers of legal catch.

4. *Scientific Observers.* NMFS regulations currently require one scientific observer on each U.S. vessel participating in fishing activities in the Convention Area (50 CFR 300.106(c), 300.111(d), and/or 300.112(i)). The status quo (no-action alternative) would leave these regulations and processes in place.

For current participants in AMLR fisheries, the preferred alternative is anticipated to represent at most a minimal compliance cost for U.S. vessels since scientific observers are already required by NMFS regulations. These minimal compliance costs may include new requirements such as a work station for use by the scientific observer which can likely be fabricated at minimal cost to the vessel. For future participants in exploratory or assessed fisheries, the final rule will represent a compliance cost for each scientific observer ranging from $55,900 per fishing season (or $232.92 per day for 240 days) to $89,220 per fishing season (or $371.75 per day for 240 days). This cost includes estimates for observer salary, insurance, travel costs, overhead, and other miscellaneous expenses associated with scientific observers.

Additionally, this cost range reflects the planned cost for a U.S. scientific observer in the Antarctic krill fishery ($55,900 per fishing season, extrapolated from actual costs from previous fishing seasons) and the average U.S. scientific observer cost for the North Pacific groundfish fishery ($89,220 per fishing season). U.S. scientific observer cost for Alaskan fisheries was used here due to the similarities with Antarctic fisheries in terms of environmental conditions, travel costs for the U.S. scientific observer to travel to and from the vessel, vessel size, and fishing season length. This level of coverage provides a good estimate for the average cost of a U.S. scientific observer in the Antarctic fisheries, and represents a middle range relative to the cost of scientific observers nationwide.

Since the final rule (preferred alternative) seeks to clarify the process of placing observers on board vessels fishing in the Convention Area and codify requirements and prohibitions associated with observer placement, the no-action alternative was rejected. This final rule clarifies the process by specifying placement of national observers on U.S. vessels harvesting AMLR; the duties and responsibilities of the observers on the vessels; and the duties and responsibilities of the vessel owners hosting the observers.

5. *Seal Excluder Device (SED).* The final rule requires the use of a seal excluder device (SED) on all U.S. vessels trawling for krill in the Convention Area (the preferred alternative). Use of SEDs and other mitigation measures to avoid fur seal deaths have been in use on some vessels for only 1 to 2 years. In a 2005 study by Hooper *et al.*, (CCAMLR Science, vol. 12: 195–205), it was concluded that mitigation measures either eliminated or greatly reduced the incidence of seal entanglements during the 2004–2005 season. Costs were found to be minimal due to the array of mitigation measures available to fishers; choice of mitigation measures depended on their budget and fishing strategy.

Based on this study, the compliance cost associated with incorporating SEDs on U.S. vessels currently participating in the krill fishery is anticipated to be minimal. For future participants in this fishery, additional costs associated with SEDs are anticipated to be small relative to the cost of the fishing gear itself. In addition, because the study found that SEDs did not cause a decrease in catch per unit effort (vessel productivity), the overall harvest is not anticipated to decline for current or future participants in this fishery based on the SEDs. Therefore, negative economic impacts are not anticipated for current or future participants in this fishery.

Positive economic impacts related to the use of SEDs which successfully reduce or eliminate seal capture include: Decreasing expenditures on time of operations and on fuel due to fewer seal entanglements which create drag on fishing gear; increasing catch by allowing nets to remain open longer since seal capture will be reduced; and reducing damage to trawl gear and to the catch associated with seal capture.

Not including a regulatory requirement for SEDs was considered but rejected as an alternative because the NMFS believes SEDs are necessary to reduce or eliminate seal capture.

6. *Definitions.* The final rule (the preferred alternative) amends the definition of ''Antarctic marine living resources'' by deleting ''All species of *Dissostichus* wherever found'' from the definition. This change clarifies this term and is not anticipated to have a negative economic impact on current fisheries operations inside or outside the Convention Area. Instead, it may represent a positive economic impact by eliminating permit-related costs to vessels who may have purchased an AMLR permit to harvest toothfish outside of the Convention Area when in fact the AMLR permit was unnecessary. Therefore, the status quo alternative, keeping the definition in its current form and thereby requiring AMLR permits to harvest toothfish outside Convention Area, was rejected.

The final rule also adds or amends the terms, ''export'', ''import'', ''international observer'', ''landing'', ''mobile transceiver unit'', ''national observer'', ''Office of Law Enforcement (OLE)'', ''Port State'', ''re-export'', ''seal excluder device'', ''transshipment'', and

''vessel monitoring system (VMS)'', as used by NMFS in implementing the CCAMLR CDS. The final rule (preferred alternative) defines and clarifies the use of these terms since they are not currently defined by NMFS regulations with regard to the CDS. The status quo was rejected because clarifying these terms will provide better guidance to fishery participants and dealers. The revised or new definitions are needed to conform U.S. regulations with CCAMLR conservation measures. The final rule is not anticipated to have an economic impact on legitimate fisheries operations in the Convention Area.

7. *Information on Harvesting Vessels.* CCAMLR adopted a Conservation Measure (10–02) in 2004 requiring additional details on every vessel a Member State licenses to fish in the Convention Area. Requested information includes the name of the fishing vessel; registration number; vessel's IMO number, if issued; external markings and port registry; three color photographs of the vessel; and other information related to the vessel, fishing operations, and equipment.

The preamble to the final rule requests this information of all applicants for an AMLR harvesting permit and may represent a minimal cost to current and future participants in terms of the time needed to fulfill the information request and costs associated with obtaining three color photographs of the vessel. NMFS makes this determination based on an estimate, in hours, of the burden to vessels for the collection of information which is estimated to be two hours: one hour for a harvest permit application and one hour for an annual report. In addition, though the cost of obtaining three color photographs of the vessel was not itemized, the cost is anticipated to be minimal.

These information requirements are specified in a Conservation Measure agreed to by the United States in CCAMLR. Therefore, other alternatives were not considered.

Executive Order 12866

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

Paperwork Reduction Act

This final rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). Requirements for 94 respondents have previously been approved under OMB Control Number 0648–0194, with a total response time of 576 hours.

This rule also contains new or revised collection of information requirements that were approved by OMB on October 10, 2006. These new or revised requirements reduce the number of respondents and total burden hours in the overall PRA collection (for current and proposed regulations) to 86 respondents (5 vessels/vessel representatives, 80 dealers, and one CCAMLR Ecosystem Monitoring Program applicant) and 295 burden hours. The reduced number of respondents and burden hours is due to an overestimation in the previous collection of information of the number of dealers importing toothfish and the number of pre-approval applications they would be submitting.

The new information collection requirements of this final rule are for C–VMS. The estimate in information collection burden hours for an estimated harvesting fleet size of 5 vessels is 14 hours per year with an associated labor cost of $350.00 (at $25/hour). There is also an estimated total annual cost burden of $4,270.00 for the fleet (5 vessels) for VMS purchase, installation, maintenance, and transmission costs resulting from the C–VMS collection. This $4,270.00 cost was estimated as follows: (a) Vessel VMS equipment purchase and installation = $2,250.00, annualized based on estimated 5-year useful life = $450 × 5 vessels = $2,250.00 annualized cost for the fleet; (b) annual vessel VMS maintenance per vessel = $350 × 5 vessels = $1,750.00 annualized maintenance, for the fleet; and (c) annual vessel transmission costs: $54.00 × 5 vessels = $270.00 for the fleet. As indicated earlier in this Classification section under Summary of the FRFA, where C–VMS is discussed, for U.S.-flagged vessels currently participating in AMLR fisheries, compliance costs associated with the final rule are anticipated to be minimal because such costs have already been realized to comply with requirements at 50 CFR 300.107(a)(3) and (a)(4).

The response estimates above include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Interested persons may send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, an information collection subject to the PRA requirements unless that information collection displays a currently valid OMB Control Number.

This action should not result in any adverse effects on endangered species or marine mammals.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Fishing vessels, Foreign relations, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: August 16, 2007.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 300, subpart G as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart G—Antarctic Marine Living Resources

■ 1. The authority citation for 50 CFR part 300, subpart G, is revised to read as follows:

Authority: 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

■ 2. In § 300.101, ''Transship'' is removed, in the definition of ''Antarctic marine living resources or AMLR(s)'' paragraph (2) is removed and paragraph (3) is redesignated as paragraph (2) and revised; and definitions for ''Export'', ''Import'', ''International observer'', ''Mobile transceiver unit'', ''National observer'', ''Office for Law Enforcement (OLE)'', ''Port State'', ''Re-export'', ''Seal excluder device'', and ''Transship or transshipment'' are added in alphabetical order; and the definitions of ''Land or landing'' and ''Vessel Monitoring System (VMS)'' are revised to read as follows:

§ 300.101 Definitions.

* * * * *

Antarctic marine living resources or AMLR(s) * * *

(2) All parts or products of those populations and species set forth in paragraph (1) of this definition.

* * * * *

Export as used in § 300.107(c) means any movement of a catch in its harvested or processed form from a territory under the control of the State or free trade zone of landing, or, where that State or free trade zone forms part of a customs union, any other Member State of that customs union.

* * * * *

Import as used in §§ 300.107(c) and 300.114 means the physical entering or bringing of a catch into any part of the geographical territory under the control of a State, except where the catch is landed or transshipped within the definitions of landing or transshipment.

* * * * *

International observer means a scientific observer operating in accordance with the CCAMLR Scheme of International Scientific Observation and the terms of a bilateral arrangement concluded between the United States and a Member of CCAMLR for the placement of a U.S. national onboard a vessel flagged by a Member of CCAMLR or for the placement of the national of a Member of CCAMLR onboard a U.S. flagged vessel.

* * * * *

Land or Landing means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded; except for purposes of catch documentation as provided for in § 300.107(c), land or landing means the initial transfer of catch in its harvested or processed form from a vessel to dockside or to another vessel in a port or free trade zone where the catch is certified by an authority of the Port State as landed.

Mobile transceiver unit means a vessel monitoring system or VMS device, as set forth at § 300.116, installed on board a vessel that is used for vessel monitoring and transmitting the vessel's position as required by this subpart.

National observer means a U.S. national placed and operating onboard a U.S. flagged vessel as a scientific observer or a foreign flagged vessel in accordance with § 300.113.

* * * * *

Office for Law Enforcement (OLE) refers to the National Marine Fisheries Service, Office for Law Enforcement, Northeast Division.

Port State means the State that has control over a particular port area or free trade zone for the purposes of landing, transshipment, importing, exporting and re-exporting and whose authority serves as the authority for landing or transshipment certification.

* * * * *

Re-export as used in §§ 300.107(c) and 300.114 means any movement of a catch in its harvested or processed form from a territory under the control of a State, free trade zone, or Member State of a customs union of import unless that State, free trade zone, or any Member State of that customs union of import is the first place of import, in which case the movement is an export within the definition of export.

* * * * *

Seal excluder device means a barrier within the body of a trawl comprised of a metal frame, nylon mesh, or any material that results in an obstruction to seals between the mouth opening and the cod end of the trawl. The body of the trawl net forward of the barrier must include an escape opening through which seals entering the trawl can escape.

* * * * *

Transship or transshipment means the transfer of fish or fish products from one vessel to another; Except for purposes of catch documentation as provided for in §§ 300.107(c) and 300.114, transship or transshipment means the transfer at sea of a catch in its harvested or processed form from a vessel to another vessel or means of transport and, where such transfer takes place within the territory under the control of a Port State, for the purposes of effecting its removal from that State. Temporarily placing a catch on land or on an artificial structure to facilitate such transfer does not prevent the transfer from being a transshipment where the catch is not landed with the definition of landing.

Vessel Monitoring System (VMS) means a system or mobile transceiver unit approved by NMFS for use on vessels that take AMLR, and that allows a Flag State, through the installation of satellite-tracking devices on board its fishing vessels to receive automatic transmission of certain information.

§ 300.106 [Amended]

■ 3. In § 300.106, paragraph (c) is removed and paragraphs (d) and (e) are redesignated as paragraphs (c) and (d), respectively.

■ 4. In § 300.107, paragraphs (a)(4), (c)(2)(i), (c)(5)(i)(A), (c)(5)(i)(C), and (c)(5)(iii) are revised to read as follows:

§ 300.107 Reporting and recordkeeping requirements.

(a) * * *

(4) Install a NMFS approved VMS unit for use in the CCAMLR Centralized satellite-linked vessel monitoring system (C–VMS) on board U.S. vessels harvesting Antarctic marine living resources that automatically transmits the vessel's position at least every 4 hours to a NMFS-designated land-based fisheries monitoring center or centers. The unit must be operated from the time the vessel leaves any port until its return to any port. The requirements for the installation and operation of the VMS are set forth at § 300.116.

* * * * *

(c) * * *

(2) * * *

(i) In addition to any AMLR harvesting permit or a High Seas Fishing Compliance Act permit issued pursuant to § 300.12, a U.S. vessel harvesting or attempting to harvest *Dissostichus* species, wherever found, must possess a DCD issued by NMFS which is non-transferable. The master of the harvesting vessel must ensure that catch information specified on the DCD is accurately recorded.

* * * * *

(5) * * *

(i) * * *

(A) Any dealer who imports toothfish must first obtain the document number and export reference number on the DCD corresponding to the import shipment and must produce verifiable information documenting use of C–VMS to allow entry into the United States.

* * * * *

(C) The document and export reference numbers described in paragraph (c)(5)(i)(A) of this section must be entered by the dealer on the preapproval application for the shipment and sent to the address designated by NMFS so that NMFS receives the documentation at least 15 working days prior to import.

* * * * *

(iii) *Exception.* Preapproval is not required for shipments of fresh *Dissostichus* species. A report of a shipment of fresh *Dissostichus* species must be completed and submitted to NMFS within 24 hours following import.

* * * * *

■ 5. In § 300.112, paragraph (b)(4) is added to read as follows:

§ 300.112 Harvesting permits.

* * * * *

(b) * * *

(4) The owners and operators of each krill harvesting vessel using trawl gear in Convention Area fisheries must install a seal excluder device.

* * * * *

§§ 300.113, 300.114, 300.115, 300.116, and 300.117 [Redesignated as §§ 300.114, 300.115, 300.117, 300.118, and 300.119]

■ 6. Sections 300.113, 300.114, 300.115, 300.116 and 300.117 are redesignated as §§ 300.114, 300.115, 300.117, 300.118 and 300.119, respectively.

■ 7. New § 300.113 is added to read as follows:

§ 300.113 Scientific observers.

This section applies to national and international observers as defined in § 300.101.

(a) This section applies to a national observer aboard U.S. vessels harvesting in the Convention Area, national observers placed on foreign flagged vessels and international observers placed on U.S. vessels harvesting in the Convention Area.

(b) All U.S. vessels fishing in the Convention Area must carry one or more scientific observers as required by CCAMLR conservation and management measures or as specified in a NMFS-issued AMLR Harvesting Permit.

(c) All U.S. vessels conducting longline sink rate testing outside the Convention area and pursuant to CCAMLR protocols must carry one or more scientific observers as specified in a NMFS-issued AMLR Harvesting Permit.

(d) *Procurement of observers by vessel.* Owners of vessels required to carry scientific observers under this section must arrange for observer services in coordination with the NMFS Southwest Fisheries Science Center Antarctic Ecosystem Research Division. The vessel owner is required to pay for observer services through an observer service provider who has provided observer services to the Federal government within the past year. In situations where no qualified observer is available through a qualified observer provider, the Secretary may authorize a vessel owner to arrange for an observer by alternative methods. An observer may not be paid directly by the vessel owner.

(e) *Insurance.* The observer service provider or vessel owner must provide insurance for observers that provides compensation in the event of an injury or death during the entire deployment, from the point of hire location to return, equivalent to the standards of the North Pacific Groundfish Observer Program set forth in § 679.80 of this title.

(f) *Educational requirements.* National observer candidates must:

(1) Have a Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences; or

(2) Have successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course.

(g) *Health requirements.* National observers must have a signed and dated statement from a licensed physician that he or she has physically examined the observer. The statement must confirm that, based upon the physical examination, the observer does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the observer from performing his or her duties satisfactorily. The statement must declare that prior to the examination; the physician was made aware of the duties of an observer and the dangerous, remote and rigorous nature of the work. The physician's statement must be submitted to the NMFS Southwest Fisheries Science Center Antarctic Ecosystem Research Division program office prior to approval of an observer. The physical exam must have occurred during the 12 months prior to the observer's deployment. The physician's statement will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(h) *Vessel responsibilities.* An operator of a vessel required to carry one or more scientific observers must:

(1) *Accommodations and food.* Provide, at no cost to the observers or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers of the vessel; and

(2) *Safe conditions.* (i) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

(ii) Have on board:

(A) A valid Commercial Fishing Vessel Safety Decal issued within the past 2 years that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I. NMFS will grant a waiver from the Voluntary Safety decal provision if the vessel is in compliance with the standards of the observer vessel safety check list developed by the Northeast Fisheries Science Center *http://www.nefsc.noaa.gov/femad/fsb/* or equivalent certification issued by the Flagging State;

(B) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(C) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(3) *Health and safety regulations.* Comply with the Observer health and safety regulations at part 600 of this title. NMFS will grant a waiver from the Voluntary Safety decal provision if the vessel is in compliance with the standards of the observer vessel safety check list.

(4) *Transmission of data.* Facilitate transmission of observer data by allowing observers, on request, to use the vessel's communications equipment and personnel for the confidential entry, transmission, and receipt of work-related messages.

(5) *Vessel position.* Allow observers access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position, course and speed.

(6) *Access.* Allow observers free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(7) *Prior notification.* Notify observers at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observers specifically request not to be notified.

(8) *Records.* Allow observers to inspect and copy the vessel's CCAMLR DCD, product transfer forms, any other logbook or document required by regulations, printouts or tallies of scale weights, scale calibration records, bin sensor readouts, and production records.

(9) *Assistance.* Provide all other reasonable assistance to enable observers to carry out their duties, including, but not limited to:

(i) Measuring decks, codends, and holding bins;

(ii) Providing the observers with a safe work area adjacent to the sample collection site;

(iii) Collecting bycatch when requested by the observers;

(iv) Collecting and carrying baskets of fish when requested by observers; and

(v) Allowing observers to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch.

(10) *Transfer at sea.* (i) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(ii) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(iii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(iv) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(i) *Standards of observer conduct*—(1) *Observers:* (i) Must not have a direct financial interest in the fishery being observed, including but not limited to:

(A) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish;

(B) Any business involved with selling supplies or services to any vessel, shoreside or floating stationary processing facility; or

(C) Any business involved with purchasing raw or processed products from any vessel, shoreside or floating stationary processing facilities.

(ii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(iii) May not serve as observers on any vessel or at any shoreside or floating stationary processing facility owned or operated by a person who previously employed the observers.

(iv) May not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating processor while employed by an observer provider.

(2) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(j) *Standards of observer behavior.* Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

(1) Observers must perform their assigned duties as described in the CCAMLR Scientific Observers Manual and must complete the CCAMLR Scientific Observer Logbooks and submit them to the CCAMLR Data Manager at the intervals specified by the Data Manager.

(2) Observers must accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(3) Observers must not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, or NMFS.

(4) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole. This includes, but is not limited to:

(i) Engaging in the use, possession, or distribution of illegal drugs; or

(ii) Engaging in physical sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(k) *Sampling station.* (1) Minimum work space aboard at sea processing vessels. The observer must have a working area of 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(2) Table aboard at-sea processing vessels. The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(3) Other requirement for at-sea processing vessels. The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

■ 8. In newly redesignated § 300.114, paragraphs (a)(1), (a)(2), (b), and (i) are revised to read as follows:

§ 300.114 Dealer permits and preapproval.

(a) * * *

(1) A dealer intending to import or re-export AMLR must obtain an AMLR dealer permit valid for one year. Preapproval from NMFS is required for each shipment of frozen *Dissostichus* species. The permit holder may only conduct those specific activities stipulated by the permit.

(2) An AMLR may be imported into the United States if its harvest has been authorized by a U.S.-issued individual permit issued under § 300.112(a)(1) or its importation has been authorized by a NMFS-issued dealer permit and preapproval issued under § 300.114(a)(1). AMLRs may not be released for entry into the United States unless accompanied by the harvesting permit or the individual permit or dealer permit and, in the case of frozen *Dissostichus* species, the preapproval certification granted by NMFS to allow import. NMFS will only accept electronic catch documents for toothfish imports.

* * * * *

(b) *Application.* Application forms for AMLR dealer permits and preapproval are available from NMFS. With the exception of the U.S. Customs 7501 entry number, a complete and accurate application must be received by NMFS for each preapproval at least 15 working days before the anticipated date of the first receipt, importation, or re-export. Dealers must supply the U.S. Customs 7501 entry number at least three working days prior to a *Dissostichus* species shipment's arrival.

* * * * *

(i) *Exception.* Preapproval is not required for shipments of fresh *Dissostichus* species. A report of a shipment of fresh *Dissostichus* species must be completed and submitted to NMFS within 24 hours following import.

* * * * *

■ 9. New § 300.116 is added to read as follows:

§ 300.116 Requirements for a vessel monitoring system.

(a) *Requirement for use.* Within 30 days after NMFS publishes in the **Federal Register** a list of approved transmitting units and associated communications service providers for the AMLR fishery, an owner or operator of a vessel that has been issued a harvesting permit for AMLR must ensure that such vessel has a NMFS-approved, operating VMS on board when on any fishing trip involving the harvesting of AMLR. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider.

(b) *Installing and activating the VMS.* Only a VMS that has been approved by NMFS for use in the AMLR fishery may be used. When installing and activating the NMFS-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must—

(1) Follow procedures indicated on an installation and activation checklist, which is available from OLE; and

(2) Submit to OLE a statement certifying compliance with the checklist, as prescribed on the checklist.

(c) *Interference with the VMS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

(d) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly, the owner or operator must immediately contact OLE, and follow instructions from that office. If notified by NMFS that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's positions or returning to port until the VMS is operable.

(e) *Access to position data.* As a condition of authorized fishing for or possession of AMLR, a vessel owner or operator subject to the requirements for a VMS in this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS.

(f) *Installation and operation of the VMS.* NMFS has authority over the installation and operation of the VMS unit. NMFS may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by NMFS.

■ 10. In newly designated § 300.117, paragraph (t) is revised and new paragraphs (u) through (ff) are added to read as follows:

§ 300.117 Prohibitions.

* * * * *

(t) Import shipments of frozen *Dissostichus* spp. without a preapproval issued under § 300.114.

(u) Assault, resist, oppose, impede, intimidate, harass, bribe, or interfere with an observer.

(v) Interfere with or bias the sampling procedure employed by an observer, including physical, mechanical, or other sorting or discarding of catch before sampling.

(w) Tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer.

(x) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties.

(y) Harass an observer by conduct that has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(z) Fish for or process fish without observer coverage required under § 300.113.

(aa) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

(bb) *Vessel monitoring systems.* (1) Use any vessel registered to an AMLR harvesting permit to conduct fishing operations unless that vessel carries an OLE type-approved mobile transceiver unit and complies with the requirements described in this subpart.

(2) Fail to install, activate, repair or replace a mobile transceiver unit prior to leaving port as specified in this subpart.

(3) Fail to operate and maintain a mobile transceiver unit on board the vessel at all times as specified in this subpart.

(4) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel as specified in this subpart.

(5) Fail to contact OLE or follow OLE instructions when automatic position reporting has been interrupted as specified in this subpart.

(6) Register a VMS transceiver unit registered to more than one vessel at the same time.

(7) Connect or leave connected additional equipment to a VMS unit without the prior approval of the OLE.

(8) Make a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a VMS unit or communication service provider.

(9) Fail to operate a Centralized satellite-linked vessel monitoring system (C–VMS) on board U.S. vessels harvesting AMLR in the Convention Area from the time of leaving port to returning to port.

(cc) Fail to use the mitigation measures required in the course of longline fishing or longline fishing research in the Convention Area to minimize the incidental mortality of seabirds.

(dd) Fail to use the mitigation measures required in the Convention Area to minimize the incidental mortality of seabirds and marine mammals in the course of trawl fishing.

(ee) Set longlines in Subareas 48.6, 88.1 and 88.2 Divisions 58.4.1, 58.4.2, 58.4.3a, 58.4.3b and 58.5.2 during daylight hours without following the CCAMLR protocol designed to mitigate seabird interactions.

(ff) Trawl for krill in Convention Area fisheries without a seal excluder device.

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Part VI

Department of Agriculture

Forest Service

36 CFR Part 219

National Forest System Land Management Planning; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AC70

National Forest System Land Management Planning

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed rule; request for comments.

SUMMARY: The Forest Service, U.S. Department of Agriculture, is providing notice and opportunity for comment on a proposed rule for National Forest System land management planning. This rulemaking is the result of a U.S. district court order dated March 30, 2007, which enjoined the United States Department of Agriculture from implementation and utilization of the land management planning rule published in 2005 (70 FR 1023) until it complies with the court's order regarding the National Environmental Policy Act, the Endangered Species Act, and the Administrative Procedure Act (*Citizens for Better Forestry et al.* v. *USDA,* C.A. C05–1144 (N. D. Cal.)). The purpose of this proposed rule is to respond to the court's ruling about notice and comment requirements under the Administrative Procedure Act by publishing the 2005 rule as a proposed rule. The Agency plans to comply with the court's order regarding the Endangered Species Act. In addition, the Agency is preparing a draft environmental impact statement under the National Environmental Policy Act.

This proposed rule sets forth a framework for National Forest System land management planning to provide for sustainability of social, economic, and ecological systems and establishes direction for developing, amending, and revising land management plans. The proposed rule clarifies that, absent extraordinary circumstances, land management plans developed, amended, or revised under the proposed rule are strategic and are one stage in an adaptive cycle of planning for management of National Forest System lands. The intent of the proposed rule is to streamline and improve the planning process by making plans more adaptable to changes in social, economic, and environmental conditions; to strengthen the role of science in planning; to strengthen collaborative relationships with the public and other governmental entities; and to reaffirm the principle of sustainable management consistent with the Multiple-Use Sustained-Yield Act and other authorities.

DATES: Comments must be received in writing by October 22, 2007. The Agency will consider and place comments received after this date in the record only if practicable.

ADDRESSES: Send written comments concerning this proposed rule through one of the following methods: E-mail: *planningrule@fscomments.org.* Include ''planning rule'' in the subject line of the message. Fax: (916) 456–6724. Please identify your comments by including ''planning rule'' on the cover sheet or the first page. Mail: Planning Rule Comments, P.O. Box 162969, Sacramento, CA 95816–2969. Please note that the Forest Service will not be able to receive hand-delivered comments. Submit comments through the World Wide Web/Internet Web site *http://www.regulations.gov.* Please note that all comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The Agency cannot confirm receipt of comments. Individuals wishing to inspect comments should call Bob Dow at (801) 517–1022.

FOR FURTHER INFORMATION CONTACT: Regis Terney, Planning Specialist; Ecosystem Management Coordination Staff (202) 205–1552, or Ron Pugh, Planning Specialist, Ecosystem Management Coordination Staff (202) 205–0992.

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1. Additional Documents Are Available

The following information is posted on the World Wide Web/Internet at *http://www.fs.fed.us/emc/nfma/2007_planning_rule.html:* (1) This proposed rule; (2) a draft environmental impact statement (EIS) analyzing the proposed rule; (3) the Civil Rights Impact Analysis for this proposed rule; (4) the cost-benefit analysis for this proposed rule; (5) the business model cost study done to estimate predicted costs to implement the 2000 planning rule, and (6) the Forest Service directives and other guidance on land management planning developed for the now enjoined 2005 planning rule. This information may also be obtained upon written request from the Director, Ecosystem Management Coordination Staff, Forest Service, USDA, Mail Stop 1104, 1400 Independence Avenue, SW., Washington, DC 20250–1104. The final environmental impact statement, when completed, will also be available on the above Web site.

2. The 2005 Planning Rule

The Department published the land management planning rule in 2005 (2005 planning rule) in the **Federal Register** on January 5, 2005 (70 FR 1023). The 2005 planning rule at 36 CFR part 219 was based on a review, conducted by Forest Service personnel at the direction of the Office of the Secretary of the United States Department of Agriculture, of an earlier planning rule promulgated in 2000 (65 FR 67514). The review affirmed the

2000 rule's underlying concepts of sustainability, monitoring, evaluation, collaboration (working with the public), and the consideration of science. However, although the 2000 rule was intended to simplify and streamline the development, amendment, and revision of land management plans (also referred to as plans), the review concluded that the 2000 rule was very costly and neither straightforward nor easy to implement. The review also found that the 2000 rule did not clarify adequately the strategic nature of land management planning.

Based on the review and over two decades of experience with plans, the Agency published the 2005 planning rule to (1) simplify and streamline the development, revision, and amendment of plans; (2) clarify that plans are strategic; and (3) ensure that direction for developing, revising, and amending plans is consistent with legal requirements and the limits of the Agency authorities and the capabilities of National Forest System lands.

On March 30, 2007, the United States District Court for the Northern District of California in *Citizens for Better Forestry et al.* v. *United States Dept. of Agriculture,* C.A. C05–1144 PJH, No. C 04–4512 PJH (N. D. Cal., March 30, 2007), enjoined the United States Department of Agriculture (USDA) from implementation and utilization of the 2005 planning rule until USDA takes certain additional steps concerning the Administrative Procedure Act (APA), the Endangered Species Act (ESA), and the National Environmental Policy Act (NEPA).

The Agency is committed to transparent rulemaking and public participation, and provided a notice and comment period for the proposed 2005 rule (December 6, 2002, 67 FR 72770). In the final 2005 rule, the Agency changed the provisions for timber management requirements, changed the provisions for making changes to the monitoring program, and added provisions for environmental management system (EMS). The Environmental Management System provisions require the Agency to define a structure and system of organizational activities, responsibilities, practices, and procedures for carrying out the Agency environmental policy. The Court found that the proposed rule did not provide sufficient notice to the public of these changes to the final rule such that the final rule was not the logical outgrowth of the proposed rule. Therefore, the Agency is providing notice and seeking comment on the proposed rule, which includes the changes made to the final 2005 planning rule.

Regarding NEPA, the court further found that the 2005 planning rule did not fit the Agency's categorical exclusion for Servicewide administrative procedures. That categorical exclusion, developed with public participation, is a recognized method of NEPA compliance. Under the court's order, however, further environmental analysis under NEPA is required. Accordingly, the Agency is preparing a draft EIS on the proposed rule.

Finally, the court found that the Agency was required to consult on the impact of the 2005 rule under ESA. Based upon an analysis of the 2005 rule, the Agency had concluded that adoption of the 2005 planning rule alone would have no effect on protected species or critical habitat. The court, however, found that some form of consultation with the U.S. Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration (NOAA) Fisheries is required. Accordingly, the Agency plans to comply with the court's order regarding the Endangered Species Act.

Without conceding the correctness of the court's ruling, which is being addressed through the judicial process, the Agency has decided to undertake these processes to expedite much needed plan revisions and plan amendments.

3. Overview of the 2007 Proposed Rule

Forest planning rules have a long history. The Department adopted the first planning rule September 17, 1979 (44 FR 53928). The planning rule was substantially amended on September 30, 1982 (47 FR 43026), and was amended in part on June 24, 1983 (48 FR 29122), and on September 7, 1983 (48 FR 40383). The 1982 rule, as amended, has guided the development, amendment, and revision of the land management plans that are now in place for all national forests and grasslands. In addition, the Department adopted a revised rule on November 9, 2000 (65 FR 67514). No plans have been developed, amended, or revised using the procedures of the 2000 rule. After review of the 2000 planning rule, the Agency proposed to revise the planning rule on December 6, 2002 (67 FR 72770) with a 90-day public comment period.

This proposed rule is identical, except as noted below, to the currently enjoined rule at 36 CFR part 219 published in the **Federal Register** on January 5, 2005 (70 FR 1023) as amended on March 3, 2006 (71 FR 10837). The preamble to the 2005 rule contains a detailed analysis of comments received and issues identified during the comment on the 2002 proposed rule. This proposed rule differs from the 2005 final rule, in that, the effective date and the end of the transition period date in § 219.14 are changed. This proposed rule also includes the amendment made March 3, 2006 (71 FR 10837) to change the transition provision for the Tongass National Forest plan. The Agency believes this proposed rule is based on a better understanding of land management planning resulting from the Forest Service's 25 years of experience developing, revising, and amending plans under the 1982 planning rule and 2000 rule transition provisions. After assessing the flaws and benefits of the planning rules during these 25 years, the Forest Service believes that it is time to rely on its experience, think differently about NFS planning, and change our planning procedures. This proposed rule embodies a strategic approach to planning that emphasizes the desired outcomes of land management and the sustainability of resources, rather than the output-oriented approach embodied in the 1982 rule. The Forest Service's intent with this proposed rule is to promote a more efficient way to protect the environment and to facilitate working with the public. The proposed rule establishes an adaptive management process with a priority on monitoring to allow timely changes to plans to respond to changing conditions and new information to ensure that clean air, clean water, and abundant wildlife remain available. In this way, the proposed rule better allows the Agency to carry out its mission to ''to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations'' (Forest Service Manual 1020.21). This proposed rule will enable the Forest Service to respond in a timely manner to changing conditions like hazardous fuels, new science, and many other dynamics that affect NFS management. A fundamental concept in this proposed rule is that protection and management of the NFS lands should be based on sound and current science.

This proposed rule assures the public the opportunity for an effective voice throughout the entire planning process. Finally, because this proposed rule will enable more efficient planning, the Forest Service will be able to shift its limited resources to the public's expressed priorities. These priorities include improved conservation of the

forests and grasslands and better responses to the threats the forests and grasslands face, such as critical wildfire danger and invasive species that degrade ecological systems.

To achieve these important goals, plans under this proposed rule will be more strategic and less prescriptive than those developed, amended, or revised under the 1982 planning rule. The Agency believes that strategic, adaptable plans are the most effective means of guiding NFS management in light of changing conditions, science, and technology. To this end, plans under this proposed rule typically will not approve or prohibit projects or activities except under extraordinary circumstances. Rather, as described further below, plans under this proposed rule typically will contain five components, which set forth guidance for subsequent decisions approving or prohibiting on-the-ground activities. The plan components are: Desired conditions, objectives, guidelines, suitability of areas, and special areas.

• *Major Themes and Areas of Public Comment in the Proposed Rule*

The major themes of the proposed rule discussed in this preamble reflect the public comments received on the 2005 rule (70 FR 1023). This proposed rule sets forth the process for development, amendment, and revision of plans for NFS units, including the national forests, grasslands, prairie, or other comparable administrative units in compliance with the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 1600 *et seq.*). The Forest Service has developed 125 plans and revised 53 plans since enactment of NFMA and has amended numerous plans. The Agency expects to complete more than 100 additional revisions during the next decade. Based on the decades of experience under the 1982 planning rule, transition provisions of the 2000 rule, and under the 2005 rule, the Agency has focused this proposed rule around the following major themes:

Plans Should Be Strategic

The purpose of plans should be to establish goals for forests, grasslands, and prairies and to set forth guidance to achieve those goals. Plans can meet these purposes through components that describe desired conditions, provide objectives for achieving desired conditions, and that identify guidelines, suitability of areas for various uses, and special areas. These five plan components will supply clear, concise statements of management intent for all areas of the national forests. Typically, a plan should not include decisions that approve or prohibit projects and activities and such decisions would follow subsequent proposed actions considered by the Agency.

Plans Should Be Adaptive and Based on Current Information and Science

Information, science, and unforeseen circumstances evolve during the 15-year life expectancy of a plan. It must be possible to adjust plans and the plan-monitoring program and to react to new information and science swiftly and efficiently. An environmental management system (EMS) approach will enhance adaptive planning and will be part of the land management framework.

Land Management Planning Should Involve the Public

Plans are prepared for public lands. The Agency firmly believes that public participation and collaboration should be welcomed and encouraged during planning. Throughout the planning process, responsible officials offer people the opportunity to work collaboratively to find solutions that balance conflicting needs and values, to evaluate management under the plans, and to consider the need to adjust plans as conditions and issues change.

Plans Should Guide Sustainable Management of NFS Lands

The Multiple-Use Sustained-Yield Act (MUSYA) of 1960 (16 U.S.C. 528–531) requires that NFS lands are to be managed to provide a continuous flow of goods and services to the nation in perpetuity. To meet this requirement, plans must supply a sustainable framework—based on social, economic, and ecological systems—to guide the on-the-ground management of projects and activities, which results in these goods and services.

Planning Must Comply With All Applicable Laws, Regulations, and Policies

Planning must comply with all applicable laws, regulations, and policies, although none of these requirements needs to be restated in plans. For example, the Clean Water Act includes requirements for nonpoint source management programs, to be administered by the States. The States or the Forest Service then develops Best Management Practices (BMPs) for use in the development of projects or activities on NFS lands. BMPs are designed to meet State water quality standards and prevent adverse environmental consequences. Specific BMPs and other legal requirements do not have to be repeated in the plan to be in effect and applicable to NFS projects and activities.

• *Plans Should Be Strategic*

Land management plans are strategic. A plan establishes a long-term management framework for NFS units. Within that framework, specific projects and activities are proposed, approved, and carried out depending on specific conditions and circumstances in the area at the time the Forest Service initiates a project. The U.S. Supreme Court described the nature of NFS plans in *Ohio Forestry Ass'n* v. *Sierra Club* (523 U.S. 726, 737 (1998)) (*Ohio Forestry*), explaining that plans are ''tools for Agency planning and management.'' The Court recognized that the provisions of such plans ''do not command anyone to do anything or to refrain from doing anything; they do not grant, withhold, or modify any formal legal license, power, or authority; they do not subject anyone to any civil or criminal liability; they create no legal rights or obligations'' (523 U.S. 733 (1998)).

The Supreme Court also recognized the similar nature of plans for public lands under the jurisdiction of the Bureau of Land Management (BLM) in *Norton* v. *Southern Utah Wilderness Alliance, 124 S.Ct. 2373 (2004) (SUWA).* The Supreme Court again observed that ''land use plans are a preliminary step in the overall process of managing public lands—'designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses.' '' In addition, ''a land use plan is not ordinarily the medium for affirmative decisions that implement the Agency's 'project[ion]s.' '' Like a NFS land management plan, a BLM plan typically '' 'is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations.' '' ''The BLM's * * * land use plans are normally not used to make site-specific implementation decisions.'' The Supreme Court acknowledged that plans are ''tools by which 'present and future use is *projected*' [and] * * * generally a statement of priorities,'' *124 S.Ct. 2373 (2004).*

Under the proposed rule, plans will continue to be the strategic plans recognized by the Supreme Court in *Ohio Forestry* and *SUWA.* As described below, the five components of a plan under the proposed rule do not approve or prohibit projects and activities, but rather characterize general desired conditions and guidance for achieving

and maintaining those conditions. Typically, a plan will not approve or prohibit activities.

On December 11, 1997, Secretary of Agriculture chartered the Committee of Scientists (COS) to provide scientific and technical advice on improvements that could be made in the planning process. The Forest Service examined the report by the COS, which said on page xxx of the synopsis of their COS Report: ''Collaborative planning begins by finding agreement in a common vision for the future conditions of the national forests and grasslands'' and said on page xxv of the synopsis of their COS report ''it also requires crafting strategies to achieve those conditions'' (Committee of Scientists Report, March 15, 1999, U.S. Department of Agriculture, Washington, DC 193 p.). The Forest Service also examined the strategic planning processes used by businesses and other government agencies. The Forest Service developed a three-part outline to organize plan components, and communicate their strategic nature. This outline is based on the plan components in the final 2005 planning rule and this proposed rule. The Forest Service describes the three parts, vision, strategy, and design criteria, in Foundations of Forest Planning, Volume 1—Preparing a Forest Plan. This document is available from the Technical Information for Planning Systems Web site at *http://www.fs.fed.us/TIPS.* Within this outline, the vision is expressed with descriptions of desired conditions. The strategy is crafted from three plan components: Suitability of areas, special areas, and objectives. Finally, the design criteria are developed using the guidelines plan component. The Forest Service directives for the 2005 planning rule (FSM 1921.1, FSH 1909.12, chapter 10) recommend responsible officials use this three-part outline for plans. For example, the Cimarron and Comanche National Grasslands Plan, Pre-Decisional Review Version was made available using that outline. See *http://www.fs.fed.us/r2/psicc/projects/forest_revision/gr_plan_prv.shtml.*

Planning documentation.

The proposed rule requires a *plan document or set of documents* (§ 219.7(a)(1)) to contain all information relevant to planning. A plan document or set of documents includes: (1) Evaluation reports; (2) all plan components, including applicable maps; (3) the plan approval document; (4) any relevant National Environmental Policy Act of 1969 (NEPA) documents; (5) the monitoring program for the plan area; (6) any documents relating to the public involvement process in planning; (7) any documents relating to the adaptive management process (including EMS) applicable to the plan; and (8) documentation of how science was taken into account in the planning process (§ 219.11).

Plan Components

This proposed rule uses the term ''plan components'' to describe the parts of a plan. How plans are characterized and how plan parts operate has evolved over the years. This evolution has occurred through an ongoing evaluation of the role plans play, how plans guide projects, how plans have or do not have on-the-ground impacts, how current plans enable or restrict responding to changing circumstances and science, and how more active and structured monitoring provides better information for monitoring, amending, or revising plans as needed. To a greater extent than before, plans under the proposed planning rule will be strategic and aspirational in nature, setting desired conditions, objectives, and guidance for subsequent on-the-ground projects or activities. Typically, the Forest Service can meaningfully evaluate environmental effects only when projects or activities developed to carry out desired conditions and objectives of the plan are proposed.

The Agency has concluded that plans are more effective if they include more detailed descriptions of desired conditions and general guidance instead of long lists of prohibitive standards, guidelines, or suitability determinations developed in an attempt to anticipate and address every possible future project or activity and the potential on-the-ground effects they could cause. Under this proposed rule, plans have five principal components (§ 219.7(a)(2)): Desired conditions, objectives, guidelines, suitability of areas, and special areas.

Desired Conditions

Desired conditions are the social, economic, and ecological attributes toward which management of the land and resources of the plan area is directed. Desired conditions are long-term and aspirational, but are neither commitments nor final decisions on projects and activities. Desired conditions may be achievable only over a period longer than the 15 years covered by the plan.

The increased attention to fire regimes provides an example of the role of ''desired conditions.'' The Forest Service has been challenged with unnatural fuel levels throughout NFS lands. Much of the western United States is currently in a severe drought cycle, and the reduction of fuel is necessary. To facilitate moving toward a healthier and more natural condition on the land, a plan could describe ecological conditions closer to those that would have occurred under natural fire regimes: For example, desired conditions for desired fuel loads, along with desired tree species, structure, distribution, and density.

The Agency, working with the public, also may seek to achieve or maintain desired conditions for attributes, such as quietness, a sense of remoteness, or attributes of our cultural heritage. Desired conditions also have a key role to play for wildlife habitat management. During plan development, it is difficult to envision all the site-specific factors that can influence wildlife. For example, in the past, plans might have included standards prohibiting vegetation treatment during certain months or standards requiring a buffer for activities near the nest sites of birds sensitive to disturbance during nesting. However, topography, vegetation density, or other factors may render such prohibitions inadequate or unduly restrictive in specific situations. A thorough desired condition description of what a species needs is often more useful than a long list of prohibitions. Thorough desired condition descriptions are more useful because they provide context, starting point, and vision for project or activity design, when the site-specific conditions are known and when species conservation measures can be most meaningfully evaluated and effectively applied. Again, a thorough description of what the Agency, working with the public, wants to achieve ultimately on the ground is key to a strategic planning process.

Objectives

Objectives are concise projections of intended outcomes of projects and activities to contribute to the maintenance or achievement of desired conditions. Objectives are measurable and time-specific and, like desired conditions, are aspirational, but are neither commitments nor final decisions approving or prohibiting projects and activities. The application of objectives is the same under the proposed rule as objectives were applied under the 1982 planning rule.

Guidelines

Guidelines provide information and guidance for the design of projects and activities to help achieve objectives and desired conditions. Guidelines are not commitments or final decisions

approving or prohibiting projects and activities. Guidelines should provide the recommended technical and scientific specifications to be used in the design of projects and activities to contribute to the achievement of desired conditions and objectives. They are the guidance that a responsible official would normally apply to a project or activity unless there is a reason to vary. The project or activity design may vary from the guideline only if the design is an effective means of meeting the purpose of the guideline, to maintain or contribute to the attainment of relevant desired conditions and objectives. If the responsible official decides a variance from the guideline is necessary, the responsible official must document how the variance is an effective means of maintaining or contributing to the attainment of relevant desired conditions and objectives. However, a variance does not require an amendment to the plan.

Section 6 of the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 1600 *et seq.*) sets forth the requirements for development and maintenance of land management plans. Section 6(c) of 16 U.S.C. 1604 directs the Secretary of Agriculture to incorporate the ''standards and guidelines'' required by that section into plans as soon as practicable. Section 6(g) directs the Secretary to promulgate regulations setting out the process for development and revision of plans and specifying the guidelines prescribed by that subsection. Subsection (g) requires the regulations to include guidelines for various things, such as land suitability identifications, diversity of plant and animal communities based on the suitability and capability of the land to meet overall multiple use objectives, and permitting harvest level increases, among other things. Subsection (g) does not specify that any particular standards must be included nor the form in which the regulations must provide guidelines. In the 1982 planning rule and the original plans, the terms ''standards and guidelines'' were usually used interchangeably. Some plan revisions have called mandatory provisions ''standards'' and discretionary direction with latitude for variance as ''guidelines.'' The 2000 planning rule did not use the term ''guidelines.'' In the 2000 planning rule, a provision labeled a *standard* could be either mandatory or discretionary depending upon its wording and the scope of its requirements.

However, in line with and to emphasize the strategic nature of plans, this proposed rule proposes the term ''guidelines'' and does not include the term ''standards'' as a required plan component.

Suitability of Areas

Suitability of areas is the identification of the general suitability of an area in an NFS unit for a variety of uses. Plans may identify areas as generally suitable for uses that are compatible with desired conditions and objectives for that area. Under this proposed rule, a plan may identify all uses that are generally suitable for a particular area or may identify the major or most prominent generally suitable uses. The identification of an area as generally suitable for a use or uses is neither a commitment nor a decision approving or prohibiting activities or uses. Responsible officials authorize the actual suitability of an area for a specific use or activity through project and activity decisionmaking.

The identification of areas as generally suitable does not ''allocate'' the area but identifies that desired conditions are compatible with that use. A future proposed project for a use not identified as a generally suitable use may be approved if appropriate based on site-specific analysis and if the proposed project is consistent with other plan components. The identification of an area as generally suitable for various uses is not a final decision compelling, approving, or prohibiting projects and activities. The identification of generally suitable land areas is guidance for future project or activity decision-making. A final determination of suitability of lands for resource uses is made through project and activity decisionmaking.

Suitable use identification has evolved over time. Plans prepared under the 1982 planning rule often characterized suitable use identification as permanent restrictions on uses or permanent determinations that certain uses would be suitable in particular areas of the unit over the life of the plan. However, even under the 1982 planning rule, these identifications were never truly permanent, unless they were statutory designations by Congress. Early in the Agency's experience with carrying out the 1982 planning rule the Forest Service realized that suitability identifications in a plan, like environmental analysis itself, would always require site-specific reviews when projects or activities were proposed. This site-specific review would verify that the proposed project or activity is compatible with desired conditions and objectives for that area or compatible with the other suitable uses for that area.

For example, on lands identified as generally suitable for timber production, site-specific analysis of a proposal could identify a portion of that area as having poor soil or unstable slopes. The project design would then exclude such portions of the project area from timber harvest based on this site-specific analysis. Thus, the Forest Service never made a final determination of suitability until the project or activity analysis and decision process was completed. This proposed rule better characterizes the nature and purpose of suitability identification.

An illustration of the effect of suitability identifications in the proposed rule may be helpful. Under this proposed rule, a plan may identify certain portions of an NFS unit as generally suitable for some uses. Example uses may include: Mechanized travel, motorized travel, non-commercial uses, non-mechanized travel, non-motorized travel, and wheeled motorized travel. Suppose for example that an area of an NFS unit is identified as generally suitable for wheeled motorized travel (or transportation development). Identification of an area in a plan as generally suitable for motorized travel does not mean that construction of any road is approved or is even inevitable. Rather, the identification merely provides guidance for where road construction may be compatible with desired conditions. The responsible official may approve proposed projects for construction of a road or roads only after appropriate project-specific National Environmental Policy Act (NEPA) analysis and public involvement.

Special Areas

Special areas are areas within the NFS designated for their unique or special characteristics. Under the proposed rule, these areas include wilderness, wild and scenic river corridors, and research natural areas. Special areas also may include smaller areas with unique botanical, geologic, or other natural feature that makes them special. Some of these areas are statutorily designated. Other areas may be designated through plan development, amendment, revision, or through a separate administrative process with appropriate NEPA analysis.

Monitoring

The monitoring program is also a central element of adaptive management in this proposed rule because monitoring is the key to discovering how to make project-specific decisions consistent with desired conditions and

objectives and to discovering what ultimately may need to be changed in a plan. Experience has shown that while some monitoring programs and specific monitoring techniques have been adequate to evaluate the need for changes in plans of national forests, grasslands, prairie, or other comparable administrative units over time, some have not. New uses, such as mountain biking, were not contemplated 25 years ago. Noxious weeds can infest a previously pristine landscape. New methods of measuring water quality or wildlife habitat can be developed. Therefore, a unit's monitoring program must be readily adaptable. Most plans revised under the 1982 planning rule, in fact, have removed most monitoring operational details from the plans themselves to allow for quicker changes to monitoring activities when needed.

The proposed rule allows the monitoring program to be changed with administrative corrections, instead of amendments, to more quickly reflect the best available science and account for unanticipated changes in conditions. The responsible official will notify the public of changes in monitoring programs, and the responsible official can involve the public in a variety of ways to develop program changes.

Streamlining the Planning Rule and Use of the Forest Service Directive System

This proposed rule places the procedural and technical details to carry out the NFMA in the Forest Service Directive System (Forest Service directives). Forest Service directives are the primary basis for the Forest Service's internal management of all its programs and the primary source of administrative direction to Forest Service employees. The Forest Service Manual (FSM) contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff to plan and execute programs and activities. The Forest Service Handbook (FSH) is the principal source of specialized guidance and instruction for carrying out the policies, objectives, and responsibilities contained in the FSM. The Forest Service is required by section 14 of NFMA (16 U.S.C. 1612(a) to provide adequate notice and opportunity to comment on the formulation of standards, criteria, and guidelines applicable to Forest Service programs. Forest Service regulations at 36 CFR part 216 define standards, criteria, and guidelines as those ''written policies, instructions and orders, originated by the Forest Service and issued in the Forest Service Manual * * *.''

The Forest Service developed directives for the enjoined 2005 rule that set forth the legal authorities, objectives, policy, responsibilities, direction, and overall guidance that Forest Service line officers, Agency employees, and others would need to use that rule. Directives in Forest Service Manuals (FSMs) 1900 and 1920 and Forest Service Handbook (FSH) 1909.12, chapters zero code, 10, 20, 30, 40, 50, 60 and 80 were issued on January 31, 2006 (71 FR 5124). A directive to FSM 1330 was issued on March 3, 2006 (71 FR 10956). A directive to FSH 1909.12, chapter 70 was issued on January 31, 2007 (72 FR 4478). If the United States Department of Agriculture (Department) promulgates the proposed rule as final, the Agency would carry out this rule using the current directives, modified as necessary to account for changes because of this rulemaking. Directives are available at *http://www.fs.fed.us/emc/nfma/index5.html.*

• *Plans Should Be Adaptive and Based on Current Information and Science*

This proposed rule requires that the responsible official take into account the best available science (§ 219.11) and specifies the process for taking science into account. Under this proposed rule, science, while only one aspect of decisionmaking, is a significant source of information for the responsible official. When making decisions, the responsible official also considers public input, competing use demands, budget projections, and many other factors.

Under the 1982 planning rule, planning teams were required to ''integrate knowledge of the physical, biological, economic and social sciences, and the environmental design arts in the planning process'' (§ 219.5(a) of 1982 planning rule). Therefore, the Agency has been under an obligation to take the best available science into account for decades. The addition of § 219.11 specifies provisions to make plain what has been part of good practice.

The proposed rule states that the responsible official may use independent peer reviews, science advisory boards, or other appropriate review methods to evaluate the application of science used in the planning process. Forest Service directives (FSH 1909.12, chapter 40) set forth specific procedures for conducting science reviews.

The responsible official must take into account the best available science, and document in the plan that science was considered, correctly interpreted, appropriately applied, and evaluate and disclose incomplete or unavailable information, scientific uncertainty, and risk. This evaluation and disclosure of uncertainty and risk provide a crosscheck for appropriate interpretation of science and help clarify the limitations of the information base for the plan.

• *Land Management Planning Should Involve the Public*

The proposed rule clearly expresses the Agency's emphasis on public involvement and collaboration. The proposed rule clarifies requirements about public involvement by consolidating provisions on consultation with interested individuals and organizations, State and local governments, Federal agencies, and federally recognized Indian Tribes.

The Agency expects that, compared with the 1982 planning rule, this proposed rule will allow more members of the public to be more effectively engaged because development of a plan, plan amendment, or plan revision will be simpler, more transparent, and faster. The public will have the opportunity to engage collaboratively in the development, amendment, or revision of a plan and in the development of the monitoring program. In addition, the public will have an opportunity to comment on a plan, plan amendment, or plan revision, and to object prior to approval if concerns remain.

The proposed rule requires opportunities for public involvement in the unit's land management planning process (§ 219.9) and in monitoring (§ 219.6(b)(3)). One of the more important changes in public involvement is how the Forest Service will work with the public to collaboratively develop, amend, or revise a plan.

The Agency has lots of experience with the type of collaboration envisioned under the proposed rule. Collaboration will vary by administrative unit by necessity to deal with local, regional, and national needs, interests, and values. In addition, the process must take into account the capability for collaboration of these stakeholders and Forest Service personnel. There are many ways to design a collaborative process including open public meetings, landscape-based, issue-based, technical reviews, issue presentations, joint fact finding, web-based interactions, and various other types of communication.

For instance, from the Forest Service perspective, the collaboration effort on

the White Mountain National Forest, located in New Hampshire and Maine, was successful. The collaboration effort began in 1997 and their planning effort was guided by the 1982 planning regulations in effect at that time. The national forest used a wide variety of public involvement, collaboration, and communication methods during the eight years they worked on revising their plan, including outreach meetings; numerous public planning meetings; monthly meetings of geographically based local planning groups; and meetings and conversations with tribal officials, local governments, and private individuals and organizations. Through these meetings, members of the public were given many opportunities to interact with the Agency's planning team and provide input on future management of the national forest. Collaboration occurred throughout the development of the revised plan and environmental impact statement, and was in addition to public comment periods required by the 1982 planning rule. These efforts culminated with the approval of a revised forest plan in September 2005. The administrative appeal period closed 90 days later without a single appeal being filed, surely an indicator of successful collaboration.

Before the injunction against the 2005 planning rule, the Agency had some opportunities to use the public participation provisions of that rule. A survey of several of the Forest Service units that have conducted collaboration activities under the 2005 planning rule indicates potential for successful collaboration under the proposed rule. For instance, the Cimarron and Comanche National Grasslands (Grasslands) applied collaborative processes in four local communities. Invited researchers and professors at regional universities participated in two scientific reviews of the plan and related assessments and monitoring questions. The Grasslands reached out to and shared information with many local stakeholders including grazing associations, environmental groups, federal, state, and local government agencies, and others. Some of the media included postcards, newsletters, and posters, newspapers, and local radio stations. They collaborated diligently with outside groups on the Plan's monitoring questions and performance measures. To share the latest information about the plan revision, processes used during plan development, and the associated documents supporting the plan, the Grasslands planning team also kept the plan revision Web site current.

The Grasslands' first round of public meetings used the collaborative tools of structured group exercises, questionnaires, open houses, individual questions-and-answers, and group discussions. From this the planning team learned what interested parties believed were the main topics to deal with and what they would like the Grasslands to look like in the future.

The Grasslands' second round of public meetings centered on the proposed plan, which was released in December 2005. In this second round, each of several small groups focused on a designated section of the proposed plan and engaged in discussion with Forest Service and third party facilitators to develop and suggest changes they would like to make to the proposed plan. This round focused on whether the proposed plan's components embodied the public's expressed desires. This round also engaged the public in evaluating the proposed plans' monitoring questions and performance measures, which had been developed in cooperation with The Nature Conservancy. Two main views were represented in the public meetings and comments. Some respondents felt their traditional lifestyle was threatened by economic conditions, drought, government interference, and the growing population of Colorado's Front Range. Other people advocated quiet-use recreation and habitat and wildlife protection. From the Forest Service perspective, collaboration provided a safe environment where these diverse groups could express differing opinions, share ideas, and begin building relationships. One result was improved relations, understanding, communication, and a confidence about working together. Based on Forest Service interpretation of feedback forms, participants were pleased with the approach used and with the mixed working group exercises. Another important benefit for Agency employees was the opportunity to improve their own collaboration skills.

The Forest Service has found that the traditional way of developing plan alternatives under the 1982 planning rule has often had an adverse effect on the planning process. The traditional approach of developing and choosing among discrete alternatives that are carried throughout the entire planning process often proves divisive, because it often maintains adversarial positions, rather than helping people seek common ground. To overcome this tendency, the proposed rule features an iterative approach to planning. The Agency recognizes that people have many different ideas about how NFS lands should be managed. Furthermore, a plan could potentially include a variety of different desired conditions, objectives, suitable uses, guidelines, and special area designations. The Agency also recognizes that the public should be involved in determining what plan components should be. Therefore, the proposed rule emphasizes participation and collaboration with the public at all stages of plan development, plan amendment, or plan revision.

The responsible official and the public will review the various options to change the plan, and together they will successively narrow potential plan component options until a proposed plan is developed. However, the proposed rule also recognizes that it is not always possible or desirable to present only one proposed plan for public comment and, therefore, the responsible official can develop options to the proposed plan for public comment when appropriate.

The Forest Service will ensure the process for plan development will be transparent to the public. Key steps in development of the proposed plan will be documented in the plan document or set of documents, which will be available to the public. While the proposed rule requires the responsible official to collaborate with the public and that a record of that collaboration be kept, it does not require in-depth social, economic, or ecological analysis of every potential option for a plan. In-depth analysis, documented in an evaluation report, is required only for the proposed plan and the options that remain after public collaboration.

The plan approved by the responsible official will be a result of public participation and collaboration that will have included consideration of a variety of different ways to manage a national forest, grassland, prairie, or other comparable administrative unit. Although the responsible official will continue to have the responsibility and the authority to make the final decision, the proposed plans that the Forest Service will present for public comment will be plans jointly and collaboratively developed with the public. The Agency hopes this approach to plan development will serve to encourage people to work together to understand each other and find common solutions to the important and critical planning issues the Agency faces. In summary, this proposed rule emphasizes collaboration and offers abundant opportunities for more effective public involvement.

• *Plans Should Guide Sustainable Management of NFS Lands*

As did the 2000 planning rule, this proposed rule makes sustainability the overall goal for NFS planning. Managing NFS lands for sustainability of their renewable resources meets the Multiple Use and Sustained Yield Act of 1960 (MUSYA) mandate that the Secretary develop and administer the renewable surface resources of the national forests for multiple use and sustained yield (16 U.S.C. 529). Managing for sustainability will provide for management of the various renewable resources without impairment of the productivity of the land, as required by the MUSYA. Sustaining the productivity of the land and its renewable resources means meeting present needs without compromising the ability of those lands and resources to meet the needs of future generations. The proposed rule is identical to the 2005 planning rule for social, economic, and ecological sustainability requirements.

NFMA requires guidelines for plans that provide for diversity of plant and animal communities (16 U.S.C. 1604(g)(3)(B)) based on the suitability and capability of the land area to meet overall multiple-use objectives. Almost 30 years after passage of the NFMA, the concepts of biological diversity at different spatial and temporal scales, including genetic diversity, species diversity, structural diversity, and functional diversity have been substantially refined and developed. Today, the Agency has a vast array of methods available to provide for diversity. The complexity of biological diversity often results in a correspondingly complicated array of concepts, measures, and values from several scientific disciplines.

The 2002 proposed rule asked for comments on an ecosystem approach (67 FR 72770, December 6, 2002). The Agency also hosted a workshop to arrange an opportunity for public discussion of the ecosystem approach and for identification of other ideas on how best to meet the statutory diversity requirement. Both in public comments and during the workshop, people expressed an extremely wide range of opinions. The Agency found these comments useful in developing a scientifically credible and realistic approach for this proposed rule and in the development of Forest Service directives that meet legal requirements and the Agency's stewardship responsibilities.

In common with 2002 proposed rule and the 2000 planning rule, the proposed rule approaches diversity at two levels of ecological organization: The ecosystem level and the species level. This concept has considerable support among scientists, has already been tested by a number of NFS administrative units developing or revising plans under the 1982 planning rule, and the now enjoined 2005 planning rule.

The Agency developed the proposed rule based on the following concepts related to diversity:

First, maintenance of the diversity of plant and animal communities starts with an ecosystem approach. In an ecosystem approach, the plan will provide a framework for maintaining and restoring ecosystem conditions necessary to conserve most species.

Second, where the responsible official determines that the ecosystem approach alone does not provide an adequate framework for maintaining and restoring conditions to support specific federally listed threatened or endangered species, species-of-concern, and species-of-interest, the plan must include additional provisions for these species. This proposed rule defines species-of-concern as those species for which the responsible official determines that continued existence is a concern and listing under the Endangered Species Act (ESA) may become necessary. This proposed rule defines species-of-interest as those species for which the responsible official determines that management actions may be necessary or desirable to achieve ecological or other multiple-use objectives. The Forest Service directive (FSH 1909.12, section 43.22) identifies lists of species developed by objective and scientifically credible third parties, including the U.S. Fish and Wildlife Service and NatureServe (*http://www.natureserve.org/*).

Third, Agency managers should concentrate their efforts on contributing to sustaining species where Forest Service has the authority and capability to carry out management activities that may affect species rather than where the cause of species decline is outside the limits of Agency authority or the capability of the plan area.

Fourth, the presence of all native and desired non-native species in a plan area is important. However, the responsible official should have the flexibility to determine the degree of conservation to be provided for the species that are not in danger of ESA listing, to better balance the various multiple uses, including the often-competing needs of different species themselves.

Fifth, the planning framework should provide measures for accounting for progress toward ecosystem and species diversity goals. The proposed rule and the Forest Service directives provide a framework within which efforts to maintain and restore species will be monitored. Progress toward desired conditions and objectives will be monitored and the results made available to the public. The adaptive management process, which includes monitoring and feedback, will help maintain and improve diversity.

The proposed rule is less detailed than 2002 proposed rule or the 2000 planning rule with respect to specific ecosystem analysis requirements. After reviewing public comments, and after consideration of the Forest Service's experience with planning over the past 25 years, the Agency concluded that such detail about analysis is more properly included in the Forest Service directives. These directives can be more extensive and can be more easily updated as the Agency learns how to improve its analytic processes and as new scientific concepts and new technological capabilities become available.

The Forest Service developed directives for the enjoined 2005 rule that set forth the overall guidance that Forest Service employees would need to use that rule. The Forest Service directives (FSM 1921.7, FSH 1909.12, chapter 40) include appropriate analysis processes. The Agency believes it is more appropriate to put specific procedural analytical requirements in the Forest Service directives rather than in the rule itself so that the analytical procedures can be changed more easily if new and better techniques emerge.

The proposed rule focuses on ecosystem diversity as the primary means of providing for the diversity of plant and animal communities. The proposed rule does not explicitly require analysis of ecosystem characteristics, natural variation under historic disturbance regimes, or spatial scales. However, guidance on appropriate analysis is included in the Forest Service directives (FSM 1921.7, FSH 1909.12, chapter 40).

Another point in common between this proposed rule and 2002 proposed rule is the concept that the more effective the ecosystem management guidance is in sustaining species habitat, the less need there is for analysis and planning at the species level of ecological organization. This proposed rule recognizes that some additional analysis and additional plan provisions may be needed for some species. It is the Agency's expectation that in developing the plan components, especially the desired conditions, that

plans will supply sufficient detail for characteristics of both ecosystem diversity and species diversity to provide the ecological conditions necessary to conserve and recover species and prevent the listing of at-risk species. We will collaborate with the ESA regulatory agencies in the development of these plan components for listed species. However, the proposed rule does not include a requirement to provide for viable populations of plant and animal species. Such a requirement had previously been included in both the 1982 planning rule and the 2000 planning rule.

The species viability requirement was not proposed for several reasons:

First, the experience of the Forest Service under the 1982 planning rule has been that ensuring species viability is not always possible. For example, viability of some species on NFS lands may not be achievable because of species-specific distribution patterns (such as a species on the extreme and fluctuating edge of its natural range), or when the reasons for species decline are due to factors outside the control of the Agency (such as habitat alteration in South America causing a decline of some Neotropical birds), or when the land lacks the capability to support species (such as a drought affecting fish habitat).

Second, the number of recognized species present on the units of the NFS is very large. It is clearly impractical to analyze all species, and previous attempts to analyze the full suite of species via groups, surrogates, and representatives have had mixed success in practice.

Third, focus on the viability requirement has often diverted attention and resources away from an ecosystem approach to land management that, in the Agency's view, is the most efficient and effective way to manage for the broadest range of species with the limited resources available for the task.

The ecosystem approach is consistent with the statute. NFMA requires the Agency to provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives.

Requirements for species population monitoring are not included in this proposed rule. Population data are difficult to obtain and evaluate because there are so many factors outside the control of the Forest Service that affect populations. The Agency believes that it is best to focus the Agency's monitoring program on habitat on NFS land where the Agency can adjust management to meet the needs of certain species. Desired conditions are often a focus of the monitoring program. The Agency will identify species-of-concern and species-of-interest (§ 219.16). Where ecological conditions for these species are identified as desired conditions, the habitat could be monitored to assist in avoiding future listing of these species. However, the proposed rule does not preclude population monitoring. Plans may include population monitoring as appropriate.

In summary, in compliance with NFMA, the ecological sustainability provisions in the proposed rule require the foundation of the plan to provide for diversity of plant and animal communities. The proposed rule requires a complementary ecosystem and species diversity approach for ecological sustainability. The proposed rule at § 219.7(a)(2) establishes requirements for developing plan components to guide projects and activities. All parts of the land management framework, including plan components, monitoring, and plan adjustment, are designed to work together to contribute to sustainability. This framework requires the responsible officials to act and empowers them to tailor the plan to sustainability needs and conditions.

• *Environmental Management Systems and Adaptive Management*

Adaptive Management and Land Management Planning

Plans must adapt to ever-changing conditions. Agency policy may change, new laws may be enacted, or court decisions can change interpretation of existing laws. Fires, invasive species, or outbreaks of insects or disease can substantially change environmental conditions. Changes in market conditions or public values may shift the demand for specific goods and services. Changes in future climate elements such as absolute or relative humidity, clouds and sky conditions, precipitation, snow depth, snowfall, soil temperature and moisture, solar radiation, temperature, wind speed and direction may influence the structure, function, and productivity of forest and related ecosystems. Scientific findings can change our understanding of the environment and of the effects of specific management activities. Better monitoring techniques or ways to achieve objectives may be found. Plans must reflect the fact that ecological conditions are dynamic and that change and uncertainty are inevitable. Consequently, plans must allow for quick response to these ever-changing conditions.

The National Association of University Forest Resources Programs and others commented on the 2002 proposed rule about the importance, from the scientific perspective, of using adaptive management when dealing with complex ecosystems. In 1999, the Committee of Scientists (COS) developed recommendations that strongly encouraged the use of adaptive management. The COS recommended placing a high priority on developing ongoing analyses that are based on monitoring to continually adjust or change land management planning decisions. In response to these comments and recommendations to place a greater emphasis on and commit to adaptive management, the Agency has chosen to rely on environmental management systems (EMS) to support the land management framework.

The adaptive management approach supported by an EMS includes plans, comprehensive evaluations, monitoring, evaluation, and research. Adaptive management requires careful coordination of the work performed through these programs. It does not require equal emphases among these various programs, but rather requires organizational learning, an active pursuit of best available scientific information, evaluation and disclosure of uncertainties and risks about scientific information, and a response to change.

A plan with a comprehensive evaluation starts the adaptive management cycle. Managers then pursue ways to achieve desired conditions and objectives described in the plan. The comprehensive evaluation may describe the risks and uncertainties associated with carrying out projects and activities under the plan. Managers prioritize risks and develop strategies to control them.

Monitoring and evaluations check for status and change across the administrative unit. Monitoring results may show that the desired conditions are not being achieved through projects. This may trigger changes in the design of future projects to reach desired conditions. Alternatively, monitoring results may lead to conclusions that the plan should be changed through a plan amendment.

Research is an important part of adaptive management. Through experimentation and long-term ecological studies, researchers investigate cause and effect relationships of management practices on the environment. Experiments test hypotheses and researchers develop reliable knowledge about effects of management practices. The new

information may be used to amend plans, amend directives, or change project level work.

Land Management Plans, Adaptive Management, and EMS

This proposed rule requires the responsible official to establish an EMS based on the international consensus standard published by the International Organization for Standardization as ''ISO 14001: Environmental Management Systems—Specification With Guidance For Use'' (ISO 14001:2004). The Agency is developing a national EMS framework that will include aspects and components for sustainable consumption and land management that will be included in each unit EMS. Each unit will also be required to identify any additional local aspects and components that will be added to the local unit EMS. The Forest Service would design and implement the national framework elements and the local unit EMS to enable the Forest Service to meet its legal obligations more efficiently by providing a nationally consistent approach to adaptive management.

The Agency's approach to EMS under the proposed rule incorporates lessons learned from the fiscal year (FY) 2006 EMS pilot efforts. These pilot efforts involved all Forest Service regions and 18 national forests and grasslands. The pilot efforts revealed that a forest-by-forest approach to EMS: (1) Creates many redundancies, (2) burdens field units with unnecessary duplicative work, (3) introduces inconsistencies, and (4) makes it difficult to assess regional and national trends emerging from EMS efforts because there is no standardization between units. Because of these problems, the Forest Service now proposes to develop a single, national EMS framework that will serve as the basis for environmental improvement on each unit of the National Forest System (NFS) and as the basis for the EMS to be established on each unit.

The national EMS framework includes three focus areas: *Sustainable consumption, land management,* and *local.* The sustainable consumption focus area concentrates on the consumption of resources and related environmental impacts associated with the internal operations of the Forest Service. This focus area is the Agency's way to achieve the goals of Executive Order 13423, ''Strengthening Federal Environmental, Energy, and Transportation Management.'' The sustainable consumption focus area applies to items such as increasing energy efficiency, reducing the use of petroleum in fleets, and improving waste prevention and recycling programs. The activities covered under this focus area include aspects and components that will be addressed in each local unit EMS.

The land management focus area applies to three land management activities applicable to all national forests and grasslands. A review of the 2006 EMS pilot program and review of the Agency's Strategic Plan found each local unit EMS will at a minimum include: (1) Vegetation management, (2) wildland fire management, and (3) transportation system management as significant aspects. The uniform approach to sustainable consumption and land management aspects and components in each local unit EMS will enable the Forest Service to track progress in achieving the objectives of the Forest Service Strategic Plan and unit land management plans and supply a feedback loop that will help improve the Agency's response when goals and objectives are not being met.

The local focus area allows local unit EMS to include aspects and components specific to an individual unit's environmental conditions and programs. Each Forest Service unit's EMS will likely differ with respect to the local focus area as opposed to the nationally standardized sustainable consumption and land management focus areas.

Each administrative unit will implement their own EMS, which includes the aspects and components developed under the sustainable consumption and land management focus areas of the national EMS framework. Additionally, each unit will either include additional local aspects and components to the unit EMS or determine that the national aspects and components are sufficient to meet local needs. Each unit will monitor and collect data for all components of its EMS. Data collected and reviewed at the unit level for the sustainable consumption and land management focus areas will be to a national standard, providing the ability to aggregate this information at the regional and national levels. The local data, as well as information developed under the national framework, will inform future decisions in the adaptive EMS cycle on the local unit.

The national EMS framework will use a systematic approach to identify and manage environmental conditions and obligations to achieve improved performance and environmental protection. The national EMS framework will facilitate the identification of and help prioritize environmental conditions; set objectives in light of Congressional, Agency, and public goals; document procedures and practices to achieve those objectives; and monitor and measure environmental conditions to track performance and verify that objectives are being met. Agency management personnel will regularly review performance, and information about environmental conditions will be regularly updated to improve environmental performance continually.

By systematically collecting and updating information about environmental conditions and practices (for example, through monitoring, measurement, research, and public input), the EMS will support a foundation for effective adaptive management, plan amendments, or even changing specific project or work practices. The Agency expects that, whenever possible, EMS and plan documentation will be coordinated and integrated to avoid unnecessary duplication.

Under the proposed rule and to conform to the ISO standard, the implementation of ISO 14001 in NFS administrative units will have to reflect the legal and other obligations of the Agency, as well as the environmental conditions and issues relevant to land management, such as sustainability and long-term issues, including cumulative effects.

The Agency's use of EMS will more efficiently meet legal obligations, will increase the transparency of Agency operations, and will enhance the Agency's ability to identify and respond to public input. Creating a transparent and consistent framework that describes how natural resources on administrative units are managed will improve the public's ability to participate more effectively in land management. The units' EMS will not replace any legal obligations that the Agency has under NFMA, MUSYA, NEPA, or any other statute, nor will the EMS diminish the public's ability to participate in the land management process or its rights under any law. To the contrary, use of EMS will significantly improve the public's ability to participate effectively in land management planning by providing a record of the Agency's efforts to continuously improve its environmental performance.

The Agency chose ISO 14001 as the EMS model for several reasons. First, it is the most commonly used EMS model in the United States and around the world. This will make it easier to implement and understand (internally and externally) because there is a significant knowledge and experience

base regarding ISO 14001. Second, the National Technology and Advancement Act of 1995 (NTAA) (Pub. L. 104–113) requires that Federal agencies use or adopt applicable national or international consensus standards wherever possible, in lieu of creating proprietary or unique standards. The NTAA's policy of encouraging Federal agencies to adopt tested and well-accepted standards, rather than reinventing-the-wheel, clearly applies to this situation where there is a ready-made international and national EMS consensus standard (through the American National Standards Institute) that has already been successfully implemented for almost a decade. Third, it has been a long-standing policy that Federal agencies establish and implement EMSs to improve environmental performance. For example, Executive Order 13148 issued April 21, 2000 (E.O. 13148), titled *Greening the Government Through Leadership in Environmental Management;* April 1, 2002, Memorandum from the Chair of the Council on Environmental Quality and the Director of the Office of Management and Budget to the heads of all Federal agencies; Executive Order 13423 issued January 24, 2007 (E.O. 13423) titled *Strengthening Federal Environmental, Energy and Transportation Management.* Federal agencies that have implemented EMS in response to the E.O. 13148 and the E.O. 13423 have typically used ISO 14001 as their model.

Several administrative units established their EMS as a part of the pilot effort before adoption of a consistent national approach. Those administrative units' EMS's include locally unique significant aspects and components as well as the aspects and components they have in common with other units. Those aspects and components they have in common with other units are similar to the aspects and components being developed under the sustainable consumption and land management focus areas of the national EMS framework. Because an EMS must include procedures to upload new requirements, these administrative units have procedures to transition to the requirements developed under the national EMS sustainable consumption and land management focus areas and they will subsequently conform to the national framework. Therefore, there would not be a transition period under § 219.14(b) for the administrative units that have completed EMS's under § 219.5.

Administrative units that do not have an EMS will satisfy the requirement in § 219.5 after they develop an EMS that implements the national framework and either adds significant aspects and components under the local focus area or determine that the national framework focus areas sufficiently address the local unit's significant aspects and components.

• *National Environmental Policy Act and National Forest Management Act Planning*

The application of NEPA to the planning process as identified in this proposed rule is the next iterative step in an evolution that began with the promulgation of the 1979 planning rule, revised in 1982. In developing the NEPA provisions of this proposed rule, the Agency took into account: (1) The nature of the five plan components under this proposed rule; (2) the experience the Agency has gained over the past 25 years from developing, amending, and revising plans; (3) the requirements of NEPA and NFMA; (4) the Council on Environmental Quality (CEQ) regulations; and (5) the comments by the Supreme Court in *Ohio Forestry Ass'n* v. *Sierra Club and Norton* v. *Southern Utah Wilderness Alliance* about the nature of plans themselves.

The 1979 planning rule required an environmental impact statement (EIS) for development of plans, significant amendments, and revisions. This requirement continued in the revised rule adopted in 1982. At the time, the Forest Service believed that the NEPA document prepared for a plan would suffice for making most project-level decisions. However, the Agency came to understand that this approach to complying with NEPA was impractical, inefficient, sometimes inaccurate, and not helpful with the plan decisionmaking process. Over the course of implementing NFMA during the past 25 years, the Agency has concluded that environmental effects of projects and activities cannot be meaningfully evaluated without knowledge of the specific timing and location of the projects and activities.

At the time of plan approval, the Forest Service does not have detailed information about what projects and activities will be proposed over the 15-year life of a plan, how many projects will be approved, where they will be located, or how they will be designed. At the point of plan approval, the Forest Service can only speculate about the projects that may be proposed and budgeted, or the natural events, such as fire, flood, insects, and disease that may occur making unanticipated projects necessary or forcing changes in the projects and the effects of projects that were contemplated. Indeed, the Forest Service has learned that over the 15-year life of a plan it can only expect the unexpected.

In the course of completing NEPA analysis on the first generation of NFMA plans, the Forest Service also became more aware of the difficulties of scale created by the size of the national forests and grasslands. The National Forest System includes 193 million acres, and individual planning units, such as the Tongass National Forest, may be as large as 17 million acres. These vast landscapes contain an enormous variety of different ecosystems, which will respond differently to the same management practices. As the Committee of Scientists (COS) said on page 26 of the Committee of Scientists Report:

> Because of the wide variation in site-specific practices and local environmental conditions (e.g., vegetation type, topography, geology, and soils) across a given national forest or rangeland, the direct and indirect effects of management practices may not always be well understood or easily predicted. (Committee of Scientists Report, March 15, 1999, U.S. Department of Agriculture, Washington, DC 193 p.)

The result is that it is usually infeasible to do environmental analysis for a national forest as a whole that is sufficiently site-specific to allow projects to be carried out without further detailed NEPA analysis after the plan has been approved.

The Agency has found itself preparing much more extensive NEPA documentation for projects than it had anticipated when it adopted the 1979 and 1982 planning rules. Moreover, the extensive changes to conditions in the plan area that occurred during the 15-year life of each plan made it increasingly impractical to tier project-level NEPA documentation to the plan EIS. The requirements of the 1979 and 1982 planning rules created an inefficient and ineffective system for complying with NEPA.

The 2000 planning rule furthered the existing presumption of requiring an EIS for plan development or revision, notwithstanding concerns raised by the COS. Secretary Glickman named the COS on December 11, 1997. The charter for the COS stated that the Committee's purpose was to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made in the National Forest System Land and Resource Management Planning Process.

The COS said, on page 117 of the Committee of Scientists Report:

Perhaps the most difficult problem is that the current EA/EIS process assumes a one-time decision. The very essence of small-landscape planning is an adaptive management approach, based upon monitoring and learning. Although small-landscape planning can more readily do real-time cumulative effects analysis * * *, this kind of analysis is difficult to integrate with a one-time decision approach. Developing a decision disclosure and review process that is ongoing and uses monitoring information to adjust or change treatments and activities will need to be a high priority * * *. (Committee of Scientists Report, March 15, 1999, U.S. Department of Agriculture, Washington, DC 193 p.)

In addition to concern about timely and accurate disclosure of environmental effects, the Agency's experience with planning has demonstrated the need to clarify what plans do. Neither the 1982 nor the 2000 planning rule clearly described or contrasted the differences between the effects of plans and the effects of projects and activities. This has been confusing to the public and Agency employees. As discussed previously in the guidelines and the suitability discussions, plan components have not been applied or interpreted consistently throughout the Agency and often have been characterized as the functional equivalent of final project-level decisions or actions, rather than guidance for projects and activities over time.

This proposed rule clarifies that plan components will be strategic rather than prescriptive, absent extraordinary circumstances. Plans will describe the desired social, economic, and ecological conditions for a national forest, grassland, prairie, or other comparable administrative unit. Plan objectives, guidelines, suitable uses, and special area identifications will be designed to help achieve the desired conditions. While plans will identify the general suitability of lands for various uses, they typically will not approve projects or activities with accompanying environmental effects. Decisions approving projects or activities that have environmental effects that can be meaningfully evaluated will typically be made subsequent to the plan. Plans under the proposed rule will describe desired conditions and objectives for the plan area, and provide guidance for future decisionmaking. Consistent with the nature of plans recognized by the Supreme Court in *Ohio Forestry Ass'n* v. *Sierra Club,* (523 U.S. 726, 737 (1998)) (*Ohio Forestry*), plan components under this proposed rule typically will not include proposals for actions that approve projects and activities, or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal instruments. Typically, plan components under this proposed rule will not be linked in a cause-effect relationship over time and within a geographic area to effects on the human environment.

Notwithstanding a plan's strategic nature, Agency approval of a plan, plan amendment, or plan revision is a Federal action under the CEQ regulations. Under NEPA and the CEQ regulations, an EIS is required for every report or recommendation on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment (16 U.S.C. 4321 *et seq.*, 40 CFR 1502.3). CEQ regulations explain that ''Federal actions'' generally tend to fall within several categories. Although these categories include adoption of formal Agency plans within the definition of ''federal action,'' not all federal actions are major federal actions significantly affecting the quality of the human environment. Plans under this proposed rule, as evidenced by their five components, are strategic and aspirational in nature. As previously explained, plans under this proposed rule normally will not include decisions with on-the-ground effects that can be meaningfully evaluated.

However, approval of parts of such actions may have environmental effects in some extraordinary circumstances. For example, plans developed under the 1982 planning rule sometimes included specific final decisions (such as oil and gas leasing under 36 CFR 228.102(d)) or decisions establishing specific prohibitions (such as decisions prohibiting motorized vehicles in certain areas). In some extraordinary circumstances, an amendment or revision might include a decision approving a project to thin certain trees to reduce fire hazards, which might have environmental effects that could be significant. In such cases, the Agency would consider these separately under Forest Service NEPA procedures, and further analysis and documentation in an EA or EIS may be appropriate.

Plan components provide a strategic framework and guidance—they typically will not authorize or compel changes to the existing environment. Achieving desired conditions depends on future management decisions that will help effect a change toward or maintain these desired conditions over time. Thus, without a proposal for action that approves projects and activities, or that commands anyone to refrain from undertaking projects and activities, or that grants, withholds or modifies contracts, permits or other formal legal instruments, the plan components cannot be linked in a cause-effect relationship over time and within the geographic area to effects on air quality; threatened and endangered species; significant scientific, cultural, and historic resources; water quality; nor other resources. Therefore, the plan components typically will not have a significant effect on the quality of the human environment.

NFMA requires the Secretary of Agriculture to determine how to comply with NEPA during the course of NFMA planning. Section 106(g)(1) of NFMA directs the Secretary to specify in land management regulations procedures to insure that plans are prepared in accordance with NEPA, including direction on when and for what plans an EIS is required (16 U.S.C. 1604(g)(1)). The CEQ regulations direct Federal agencies to adopt procedures that designate major decision points for the Agency's principal programs likely to have a significant effect on the human environment and insure that the NEPA process corresponds with them (40 CFR 1505.1(b)).

During plan development, amendment, or revision, the Agency generally is not at the stage in national forest planning of proposing actions to accomplish the goals in plans. CEQ regulations define ''proposals'' that can trigger the requirement for an EIS as ''that stage in development of an action when an Agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated'' (40 CFR 1508.23). The statements of desired conditions (goals) and objectives in a plan typically influence the choice and design of future proposed projects and activities in the plan area. However, the influence that desired conditions have on the direct, indirect, and cumulative effects of future projects or activities is not known and cannot be meaningfully analyzed until such projects and activities are proposed by the Agency.

Meaningful analysis of the effects of a plan is not possible because plan components typically cannot be linked in a cause-effect relationship over time and within a geographic area to effects on the human environment. This cause-effect relationship is lacking when plans do not include proposals for actions that approve projects and activities; that command anyone to refrain from undertaking projects and activities; or that grant, withhold, or modify

contracts, permits, or other formal legal instruments.

The Agency views a final decision on a proposed action as having effects on the air quality; threatened and endangered species; significant scientific, cultural, and historic resources; water quality; or other resources when such effects may occur without additional action from the Agency other than routine administrative actions to carry out the decision. There normally is a *cause-effect relationship* between the project or activity and the environmental impacts. For example, there would normally be a *cause-effect relationship* between the decision to approve a timber sale and the direct, indirect, and cumulative effects on the environment of the timber sale project.

No such cause-effect relationship exists when the Agency merely designates an area as suitable for timber harvest because a timber sale may never be proposed for the area. Even though the area is designated as suitable for timber harvest, the area may never be used for timber harvest. For land management plans developed under the proposed planning rule, a cause-effect relationship typically does not exist. To establish a cause-effect relationship for a land management plan, plan revision, or plan amendment, it is not sufficient to find that one or more plan components increase or decrease the likelihood of effects from future actions on one of the unit's resources. A plan component may indeed be a preliminary step for a later decision, which has environmental effects. Unless and until that later decision is made and carried out, no effects occur. Thus, the act of planning done, while preliminary to the decision, itself causes no effects. It is only when a plan component by itself, without further analysis and decisionmaking by the Agency, will either allow actions or prohibit actions by the Agency or other parties that effects on natural resources may be caused by the plan component.

While a plan includes desired conditions (goals) and objectives, the Forest Service does not make a decision on an action aimed at achieving desired conditions or objectives until the Agency proposes projects and activities under the plan. Thus, the decision to adopt, amend, or revise a plan is typically not the point in the decisionmaking process at which the Agency is proposing an action likely to have a significant effect on the human environment.

The approach in this proposed rule is consistent with the nature of Forest Service land management plans acknowledged in *Ohio Forestry Ass'n* v. *Sierra Club,* 523 U.S. 726 (1998). As described above, in *Ohio Forestry,* the Supreme Court held that the timber management provisions of land management plans are tools for further Agency planning, and these provisions guide, but do not direct future management. When considering the role of land management plans for timber harvesting, the Supreme Court explained that:

> Although the Plan sets logging goals, selects the areas of the forest that are suited to timber production, and determines which ''probable methods of timber harvest'' are appropriate, it does not itself authorize the cutting of any trees. Before the Forest Service can permit the logging, it must: (a) Propose a specific area in which logging will take place and the harvesting methods to be used; (b) ensure that the project is consistent with the Plan; (c) provide those affected by proposed logging notice and an opportunity to be heard; (d) conduct an environmental analysis pursuant to the National Environmental Policy Act of 1969, to evaluate the effects of the specific project and to contemplate alternatives; and (e) subsequently make a final decision to permit logging, which affected persons may challenge in an administrative appeals process and in court.

The Supreme Court also described plans as merely strategic and without any immediate on-the-ground impact in the *SUWA* decision discussed above in the preamble section titled ''*The Strategic nature of land management plans.*'' In both cases, the Supreme Court recognized the strategic nature of plans. The Supreme Court's analysis is consistent with and reinforces the Forest Service's approach to this issue, which is based on 25 years of completing EISs for plans. The Supreme Court's analysis also supports the approach to planning and NEPA compliance that we are taking in the proposed rule.

In accordance with NFMA, NEPA, and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provision of NEPA, this proposed rule will ensure that Forest Service NEPA analysis will be appropriately timed to coincide with those stages in Agency planning and decisionmaking likely to have a significant effect on the human environment. The proposed rule emphasizes the clear distinction between the adoption, revision, or amendment of a plan, versus projects and activities having on-the-ground environmental effects. In this proposed rule, the Agency clarifies that plans are strategic. Because plans are strategic, this proposed rule specifies that plans, plan amendments, and plan revisions may be categorically excluded from NEPA documentation as specified in Agency NEPA procedures.

The CEQ regulations (40 CFR parts 1500–1508) require that each Agency establish specific criteria for and identification of three types of actions: (1) Those that normally require preparation of an environmental impact statement (EIS); (2) those that normally require the preparation of an environmental assessment (EA); and (3) those that normally do not require either an EA or EIS. Actions in this third type are defined as categorical exclusions because they do not individually or cumulatively have a significant impact on the human environment; therefore, neither an environmental assessment nor an environmental impact statement is required (40 CFR 1508.4).

A categorical exclusion is not an exemption from the requirements of NEPA. Categorical exclusions are an essential part of NEPA implementation. Categorical exclusions provide a categorical determination that certain actions do not result in significant impacts, eliminating the need for individual analyses and lengthier documentation for those actions. Before the Forest Service approves a categorical exclusion, the Agency extensively analyses any effects from the type of action under consideration. If the Agency determines that potential effects of the action are non-significant and if CEQ finds that the Agency's determination conforms with NEPA and the CEQ regulations, only then can the Agency approve a categorical exclusion.

To reduce excessive paperwork, CEQ regulations at 40 CFR 1500.4(p), 1507.3, and 1508.4 direct agencies to use categorical exclusions to define categories of actions, which do not individually or cumulatively have a significant effect on the human environment and do not require the preparation of an environmental assessment or an environmental impact statement. Current Forest Service procedures for complying with and implementing NEPA are set out in Forest Service Handbook (FSH) 1909.15.

The Forest Service approved a categorical exclusion for the development, amendment, and revision of plans on December 15, 2006 (71 FR 75481). The categorical exclusion is set out in FSH 1909.15, chapter 30, which is available electronically at *http://www.fs.fed.us/im/directives.* The Agency proposed the categorical exclusion on January 5, 2005 (70 FR 1062). The Forest Service provided a 60-day comment period on the proposed land management planning categorical exclusion (Planning CE) (70 FR 1062;

January 5, 2005). The Forest Service received 55,000 comments in 3,334 responses (letters, form letters, and petitions). In addition, the Forest Service presented and sought public comment on this approach to NEPA and NFMA planning in the 2002 proposed rule. The categorical exclusion clarifies that, absent extraordinary circumstances, plan development, plan amendment, or plan revisions do not significantly affect the environment, and thus are categorically excluded from further NEPA analysis. The Forest Service will comply with all applicable NEPA requirements, including preparation of an EA or an EIS where appropriate, for example, when considering specific projects or making other project-specific decisions that may affect the human environment.

The Agency identified three key public concerns related to categorically excluding plans. First, many people commented that they were unsure about how they would be involved in planning if an EIS process were not used. Second, they questioned how planning analysis would be documented in the absence of an EIS. Third, some asked how cumulative effects would be accounted for if a Categorical Exclusion (CE) were relied upon. The Agency has fully considered the concerns raised by the public and believes the proposed rule addresses the concerns as follows:

Public Participation

This proposed rule includes extensive opportunity for public participation that goes beyond the requirements for public participation under the NEPA EIS process and improves the clarity of the process for public notification (§ 219.9). For example, the proposed rule requires the Forest Service to involve the public in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program.

Evaluations and Documentation

This proposed rule requires three types of evaluation reports: Comprehensive evaluations, evaluations for plan amendments, and annual evaluations of monitoring information (§ 219.6). Evaluation reports: (1) Document existing social, economic, and ecological conditions and trends; (2) will be available to the public and included in the plan document or set of documents; (3) are prepared for plan development, plan amendment, and plan revision; (4) use a systematic and interdisciplinary approach (§ 219.7(a)); and (5) consider environmental amenities and values along with economic and technical considerations (§ 219.10).

The responsible official will supplement the plan document or set of documents with annual evaluation reports and with other information as appropriate to form a continually refreshed and current analytical base of information. Because of this more current information base, evaluations will supply a much stronger and more robust source of information to rely on for project and activity environmental analysis than a plan level EIS prepared as required under the 1982 planning rule.

Cumulative Effects

Predictive EIS environmental analysis under the 1982 planning rule grew increasingly stale over time when the information and analyses were not updated. In contrast, the proposed rule will support more timely and informed consideration of cumulative effects. To account for cumulative effects of management and natural events, this proposed rule requires (§ 219.6(a)): (1) A comprehensive evaluation of current conditions and trends for the development of a new plan or plan revision; (2) annual plan monitoring and evaluation; and (3) update of the comprehensive evaluation of current conditions and trends at least every 5 years. The plan document or set of documents also supports a robust information base for the consideration of cumulative effects of Agency proposals in NEPA documents prepared for projects or activities.

The Relationship Between EMS and NEPA

For some elements of the adaptive management process, EMS will generate information that may be useful in Agency NEPA analysis of projects and activities. However, the greatest improvement in Agency operations will be associated with completing the adaptive management cycle described in the proposed rule. This will lead to an improvement in plan components under which responsible officials will conduct project and activity NEPA analysis.

Under the 1982 planning process, the Agency collects information about environmental conditions to prepare detailed NEPA analysis and document plan development, plan amendment, or plan revision. There is no effective system for keeping this information current, because the collection and analysis of information often stops when the NEPA analysis and documentation is finished. Therefore, the information collected for the environmental documents for 125 NFS units can grow stale as environmental, social, and economic conditions change. Further, the focus of the information collection and analysis process is on NEPA analysis and documentation, rather than for use in the ongoing adaptive management process of the administrative unit. Therefore, the large volume of information and analysis that is created over a long period is often used as a snapshot for making a single decision (plan, plan amendment, or plan revision), instead of being integrated into a dynamic, ongoing adaptive management system to effectively manage units.

This rule will improve this situation by requiring each forest, grassland, prairie, or other comparable administrative unit to carry out an EMS that includes defined procedures for identifying environmental aspects, keeps that information current, and includes monitoring and measurement procedures for continually evaluating conditions in the unit. The EMS requirement is separate from any obligations to develop EISs, EAs, or CEs. Therefore, the obligation to keep this information current and available to the public for review is separate from the obligation to create a NEPA document. The Agency will use this EMS information to formulate the plans that are the subject of this rule, to manage administrative units on an ongoing basis, and to develop and to analyze specific project and activity proposals that trigger the need for EISs, EAs, or CEs. By carrying out EMS, administrative units will collect and evaluate the data on an ongoing basis to improve on a timely basis the plan components and create documents needed for NEPA. This will enable the Agency to efficiently create accurate and relevant NEPA documents. This proposed rule will ensure that managers of the administrative unit and the public have access to a ''library'' of current information, analyses, and research that, through EMS, will be used by managers of the administrative unit to adapt management practices to avoid unwanted environmental effects.

- *Summary*

This proposed rule emphasizes the strategic nature of NFMA land management plans and permits more flexibility in carrying out projects in response to ongoing developments in scientific understanding and changing on-the-ground conditions, such as unforeseen natural disasters. It requires that responsible officials take into account the best available scientific information. It requires public involvement and collaboration

throughout the cycle of planning—plan development, plan amendment, plan revision, project and activity decisionmaking, and monitoring of environmental performance. The proposed rule requires plans to focus on the social, economic, and ecological sustainability of the management of the NFS, and it has specific provisions for biological diversity at both the ecosystem and species level. It clarifies the nature of plans and explains how the planning process complies fully with the requirements of NEPA. Plans developed and maintained using the EMS and other processes required by this proposed rule will improve the performance, accountability, and transparency of NFS land management planning.

4. Section-by-Section Explanation of the Proposed Rule

In this proposed rule, the Agency listed the proposed sections in order of those that are more general first, followed by those that are more specific. The first section introduces the reader to what is covered in this proposed rule and acknowledges the multiple-use and sustained yield productivity mandate of the Forest Service (§ 219.1). Section 219.2 describes planning in general and the levels of planning in the Agency. Then, this proposed rule contains a general description of plans (§ 219.3); NEPA compliance (§ 219.4); EMS (§ 219.5); the specific plan requirements (§§ 219.6–219.12); followed by objections to plans, plan amendments, or plan revision (§ 219.13); effective dates and transition (§ 219.14); severability (§ 219.15); and definitions (§ 219.16).

Section 219.1—Purpose and Applicability

This section introduces the reader to what is covered in this proposed rule, acknowledges the multiple-use and sustained-yield productivity mandate of the Forest Service, and directs the Chief of the Forest Service to establish planning procedures in the Forest Service directives. The Agency clarifies the goal to sustain the multiple uses of its renewable resources in perpetuity while maintaining the long-term productivity of the land.

Section 219.2—Levels of planning and Planning Authority

This section describes planning, the levels of Agency planning, and the basic authorities and directions for developing, amending, or revising a plan.

Section 219.3—Nature of Land Management Planning

This section describes the nature of planning, and the force and effect of plans.

Section 219.4—National Environmental Policy Act Compliance

This section describes how planning will comply with NEPA.

Section 219.5—Environmental Management Systems

This section describes the requirements for EMS and responds to public comments about how planning relates to adaptive management. This proposed rule defines adaptive management as a natural resource management approach in which actions are designed and executed, and effects are monitored to improve the efficiency and responsiveness of future management actions. The ''Overview of the 2007 Proposed Rule'' section of the preamble describes in detail the provisions of this section for EMS.

Section 219.6—Evaluations and Monitoring

This section specifies requirements for plan evaluation and plan monitoring. This proposed rule allows the responsible official to change the monitoring program by making an administrative correction and notifying the public, rather than requiring plan amendments. This administrative correction will enable the plan to more quickly reflect the best available science and account for unanticipated changes in conditions. The responsible official will notify the public of changes in a monitoring program, and the responsible official can involve the public in a variety of ways in developing changes to the program. Discussions of both evaluation and monitoring are found in the ''Overview of the 2007 Proposed Rule'' section of the preamble. The Agency is proposing a requirement for comprehensive evaluation of the area of analysis (§ 219.6(a)(1)) at no longer than 5-year intervals and conducting an evaluation when amending a plan (§ 219.6(a)(2)). The Agency has also proposed a provision that the monitoring program take into account the best available science to improve the evaluation process.

One clarification about the requirement at § 219.6(b)(2)(ii) may help understanding. This paragraph requires that the responsible official design the monitoring program to determine the effects of management on the productivity of the land. The term ''productivity'' refers to all of the multiple uses, such as outdoor recreation, range, timber, watershed, and wildlife and fish. Use of this term is broader than just commercial uses.

Section 219.7—Developing, Amending, or Revising a Plan

This section includes requirements for plan components; planning authorities; plan processes, including considering lands for recommendation as potential wilderness areas; developing plan options; administrative corrections; plan document or set of documents; and the plan approval document.

As explained in the ''Overview of the 2007 Proposed Rule'' section of the preamble, plans previously contained standards. Plans under the proposed rule will contain guidelines (§ 219.7(a)(iii)) due to the strategic nature of plans. The Agency believes mandatory standards are too restrictive to be effective for project design because of variable site conditions. The Forest Service directives provide additional direction for writing plan guidelines, many of which will be measurable. To make project consistency with guidelines easy for decisionmakers and the public to check, Forest Service directives provide criteria for guidelines and require guidelines be written clearly (FSH 1909.12, chapter 10). This proposed rule also allows forest-wide and area-specific guidelines. As discussed earlier in the preamble in the ''Overview of the 2007 Proposed Rule,'' if the responsible official decides a variance from the guideline is necessary, the responsible official must document how the variance is an effective means of maintaining or contributing to the attainment of relevant desired conditions and objectives.

Although the proposed rule does not specifically identify standards as a plan component, the proposed rule also does not preclude their inclusion in plans; responsible officials may include standards in plans under extraordinary circumstances. Standards may include specific decisions (prohibiting motorized cross-country travel or prohibiting boat use on a specific river segment). If a responsible official proposes this kind of standard in a plan, the standard must be considered in an appropriate NEPA analysis.

Plans may reference other sources of information besides the five plan components of desired conditions, objectives, guidelines, suitability of areas, and special areas. Other sources of information may include previous plan decisions that remain in place and become part of the new plan, or other

sources of direction and guidance. There is a wide variety of other sources of information for project and activity decisionmaking. This information can be laws, regulations, policy (FSM and FSH), memoranda of understanding, conservation strategies, programmatic agreements, species accounts, scientific literature, and other sources. The responsible official may cross-reference other sources of information in the plan. Plans should not repeat existing direction found in laws, regulations, and Forest Service directives.

Note that at the project or activity level, the responsible official can bring the other sources of information to bear in response to the specific conditions found in the project area. The responsible official adopts project specific guidelines and other sources of information for individual projects or activities through the project or activity decision. The specific items adopted become binding commitments for the life of that project or activity.

When responsible officials revise plans, some of the plan provisions and their NEPA analysis may be still relevant and current. If so, the responsible official may propose to retain the previous provisions in the revised plan. For example, guidelines for Grizzly Bear Habitat Conservation for the Greater Yellowstone Area National Forests adopted in the April 18, 2006, Record of Decision amending the Greater Yellowstone National Forest plans would likely remain relevant and current for subsequent project and activity decisions on those forests even after those plans are revised in future years. The responsible official may carry over provisions into the revised plan. Responsible officials would identify the specific provisions that they propose to retain in the plan revision. Like other provisions in plans, subsequent projects and activities must be consistent with such provisions.

Special area identification (§ 219.7(a)(v)) is an integral part of the planning process. This proposed rule provides for the identification of special areas in the plan. After reviewing comments, and consideration of the Forest Service's experience with planning over the past 25 years, the Agency concluded that guidance about special area concerns, such as potential wilderness evaluations or social and economic values, are more properly included in the Forest Service directives. Provisions in directives can be more extensive and easier to revise as the Agency learns how to improve its processes and as new scientific concepts become available.

The intent is to allow plans to recognize categories of special areas established by Congress, the Department, or the Agency. FSM 2370 and FSH 1909.12, chapter 10 display categories of special areas meeting these criteria. To ensure a consistent approach, plans should limit special areas to those listed in these directives. If a land area does not qualify as a special area, but needs specific guidance, planners may specify that through other plan components.

If the responsible official needs to propose actions or prohibitions to reach the desired conditions for a special area, that proposal must be covered by separate appropriate National Environmental Policy Act (NEPA) analysis for an individual area or a group of areas. For example, appropriate site-specific NEPA analysis and decisionmaking would be required to support the establishment of a research natural area or a closure order that prohibits or restricts public access in a special area.

Section 219.7(b) provides for administrative corrections to plans. This proposed rule, at § 219.7(b)(5), proposes a category for administrative corrections to include non-substantive changes in the plan document or set of documents. Administrative corrections may not be used to make substantive changes in the plan components. The Agency made this proposal to supply a specific way to allow for timely updates of new science and other sources of information into the plan document or set of documents. Changes to the plan document or set of documents may also occur when the responsible official removes outdated documents, for example, when a new inventory replaces an older one.

Administrative corrections may not be used to change long-term sustained-yield capacity (LTSYC) or the timber sale program quantity (TSPQ). The LTSYC is the amount of timber that can be removed annually in perpetuity on a sustained-yield basis from lands generally suitable for timber harvest (FSM 1921.12, FSH 1909.12, chapter 60). Responsible officials base these estimates on the amount of timber that could be removed assuming the desired vegetation conditions for the area have been fully achieved. This is an NFMA requirement (16 U.S.C. 1611). This is a substantive limit and the proposed rule would not allow a responsible official to change LTSYC by an administrative correction.

The TSPQ is the average projected output of wood fiber for the plan area. The projected outputs reflect past and projected budget levels and organizational capability to accomplish timber harvest activities. Calculations of the TSPQ include all planned outputs of wood fiber sold from NFS lands. This includes all sawlogs, veneer bolts, and other material such as pulpwood and firewood. The TSPQ should be identified in the ''objectives'' plan component. This is a substantive plan component and the responsible official may not change TSPQ by an administrative correction.

FSH 1909.12, section 65 requires documentation of the projected vegetation management practices by acres and volume in the first decade of the plan. Projected vegetation management practices are not commitments to action and do not have on-the-ground effects. Vegetation management practices may include regeneration cutting, uneven-aged management, intermediate harvesting, reforestation, and timber stand improvement. These projections of acres and volume are mere estimates of what the Agency might do in carrying out projects and activities under the plan. These projections are not aspirations or outcomes but the estimates of potential timber harvest methods within the plan unit based on past performance. However, past performance is no indication of future performance because circumstances beyond the Agency's control may affect performance. Therefore, these projected vegetation management practices are not substantive and the responsible official may change them by administrative corrections.

The responsible official must involve the public in designing the monitoring program (§ 219.9(a)). The responsible official must notify the public of changes in the monitoring program (§ 219.9(b)(2)(iii)). The proposed rule allows the plan's monitoring program to be changed with administrative corrections, rather than plan amendments, to more quickly reflect the best available science and account for unanticipated changes in conditions. The responsible official can involve the public in a variety of ways to develop program changes.

Section 219.8—Application of a New Plan, Plan Amendment, or Plan Revision

This section describes how the responsible official applies new plans, plan amendments, or plan revisions to new or ongoing projects or activities. This proposed rule requires project or activity consistency with the applicable plan. In addition, paragraph b of this section describes how projects or activities developed after approval of

the plan must be consistent with applicable plan components. The wording of this section conforms to 16 U.S.C. 1604(i). The Agency has placed more guidance on plan consistency in FSH 1909.12 section 11.4.

Section 219.9—Public Participation, Collaboration, and Notification

The ''Overview of the 2007 Proposed Rule'' section of the preamble contains a discussion of public involvement. The Agency has placed more guidance on public participation in FSM 1921.6 and FSH 1909.12, chapter 30.

Section 219.10—Sustainability

This proposed rule proposes sustainability as the goal for NFS planning and proposes the concept of the interrelated and interdependent social, economic, and ecological elements of sustainability.

This proposed rule at § 219.10(b)(1) requires plan components to provide a framework to sustain the characteristics of ecosystem diversity in the plan area. The Agency defines the term *characteristics of ecosystem diversity* at FSM 1905. These characteristics are parameters that describe an ecosystem composition (such as major vegetation types, rare communities, aquatic systems, and riparian systems); structure (such as successional stages, water quality, wetlands, and floodplains); principal ecological processes (such as stream flows and historical and current disturbance regimes); and soil, water, and air resources. Providing the characteristics of ecosystem diversity is the primary way a plan will contribute to sustaining native ecological systems. Thus, plans provide for sustaining systems, the systems provide for diversity, and Forest Service meets NFMA requirements.

To carry out this goal, this proposed rule proposes a two-level approach to sustaining ecological systems: Ecosystem diversity and species diversity. The Agency defines the specific procedures for the two-level approach in FSM 1921.7 and FSH 1909.12, chapter 40. For example, FSM 1921.76c specifies how to sustain species diversity. FSM 1921.76c says plan components for species-of-concern should provide appropriate ecological conditions to help avoid the need to list the species under the Endangered Species Act. Appropriate ecological conditions may include habitats that are an appropriate quality, distribution, and abundance to allow self-sustaining populations of the species to be well distributed and interactive, within the bounds of the life history, distribution, and natural population fluctuations of the species within the capability of the landscape and consistent with multiple-use objectives. A self-sustaining population is one that is sufficiently abundant and has appropriate population characteristics to provide for its persistence over many generations. The ''Overview of the 2007 Proposed Rule'' section of the preamble contains a further discussion of sustainability.

Section 219.11—Role of Science in Planning

This proposed rule requires the responsible official to take into account the best available science. The Agency proposes the words ''take into account'' because this term better expresses that formal science is just one source of information for the responsible official and only one aspect of decisionmaking.

This proposed rule states that the responsible official may use independent peer reviews, science advisory boards, or other review methods to evaluate science used in the planning process. Forest Service directives specify specific procedures for conducting science reviews at FSM 1921.8 and FSH 1909.12, chapter 40. The ''Overview of the 2007 Proposed Rule'' section of the preamble discusses the role of science in planning.

The Agency is committed to taking into account the best available science in developing plans, plan amendments, and plan revisions as well as documenting the consideration of science information. Under this proposed rule, the responsible official must: (1) Document how the best available science was considered in the planning process within the context of the issues being considered; (2) evaluate and disclose any substantial uncertainties in that science; (3) evaluate and disclose substantial risks associated with plan components based on that science; and (4) document that the science was appropriately interpreted and applied. Any interested scientists can be involved at any of the public involvement stages.

Section 219.12—Suitable Uses and Provisions Required by NFMA

This section discusses identification of suitable land uses, identification of lands not suitable for timber production, and NFMA requirements for timber. This proposed rule requires the Chief of the Forest Service to develop directives to discuss the timber provisions for NFMA. The Forest Service developed directives under the enjoined 2005 rule that applied to timber. FSM 1921.12 and FSH 1909.12, chapter 60 specifies guidance for timber provisions of NFMA.

Guidance for suitable uses, under paragraph (a) of this section, describes the identification of suitable land uses. NFS lands are generally suitable for a variety of multiple uses, including timber harvest and timber production, unless administratively withdrawn or prohibited by statute, Executive order, or regulation. On lands generally suitable for timber, the Forest Service may harvest timber for a variety of purposes, such as creating openings for wildlife or for fuels reduction and restoration. If timber production is not an objective for lands generally suitable for timber, the responsible official must identify these lands as not suitable for timber production (§ 219.12(a)(2)). More guidance for identification of lands not suitable for timber harvest and guidance for timber harvest is placed in the Forest Service directives at FSM 1921.12 and FSH 1909.12, chapter 60.

In addition, Forest Service directives discuss other NFMA requirements for timber. These requirements include limitations on timber harvest and provisions for plans to determine forest management systems, restocking requirements, harvesting levels in light of the multiple uses, and the potential suitability of lands for resource management, as well as projections of proposed and possible actions, including the planned timber sale program. The Agency placed detailed NFMA requirements in the directives (FSM 1921.12, FSH 1909.12, chapter 60) to balance the specific procedures for timber and the provisions for other sections of this proposed rule.

In addition, the Agency supplies detailed guidance for determining the culmination of mean annual increment (CMAI) in the Forest Service directives. NFMA requires establishment of guidance so that stands of timber, not individual trees, generally have reached CMAI. The Forest Service directives clarify the technical limits of the CMAI concept at FSM 1921.12 and FSH 1909.12, chapter 60.

Forest Service directives stipulate guidance for restocking requirements at FSH 1921.12 and FSH 1909.12, chapter 60. Forest Service directives meet the requirement of NFMA to ensure that timber will be harvested from NFS lands only where there is assurance that such lands can be adequately restocked within five years after harvest. Adequate restocking may vary depending on the purpose of a harvest and the objectives and desired conditions for the area. Restocking is not required for lands harvested to create openings for fuel breaks and vistas, to prevent

encroaching conifers, and other similar purposes. This will apply to all timber harvest, including final regeneration harvest. Therefore, responsible officials will include guidance in plans for adequate restocking depending on the purpose of a harvest, the desired conditions, and objectives for the area.

This proposed rule uses the expression ''generally suitable'' because identification of suitability is guidance and responsible officials must approve suitability for specific activities through project and activity decisionmaking. In response to public comment and to clarify the criteria for identifying suitability, this proposed rule has listed the resources as outdoor recreation, range, timber, watershed, and wildlife and fish purposes so that the resources listed are consistent with the Multiple-Use Sustained-Yield Act (MUSYA) of 1960 (16 U.S.C. 528–531). Energy resource development and mining activities are not included in § 219.12(a)(1) because, even though allowable uses on many NFS lands, they are not renewable surface resources listed in MUSYA.

Forest Service directives discuss the upper limit of timber and use long-term sustained-yield capacity as the upper limit of timber that the Forest Service may harvest during the planning period (FSM 1921.12, FSH 1909.12, chapter 60).

Section 219.13—Objections to Plans, Plan Amendments, or Plan Revisions

This section sets up the objection process as a way the public can challenge plans, plan revisions, or plan amendments before the responsible official approves them. The Agency expects the objection process to resolve many potential conflicts by encouraging resolution before the responsible official approves a plan, plan amendment, or plan revision.

The Committee of Scientists (COS), in their 1999 report, recommended that the Forest Service seek to harmonize its administrative appeal process with those of other Federal agencies. The COS said a pre-decisional process would encourage internal Forest Service discussion, encourage multi-Agency collaboration, and encourage public interest groups to collaborate and work out differences. Therefore, to be more consistent with the Bureau of Land Management (BLM) and to improve public participation efforts, the Agency is proposing the pre-decisional objection process (§ 219.13) to replace the appeals process under the 1982 rule. The objection process complements the public participation process because objectors and the reviewing officer can collaboratively work through concerns before a responsible official approves a plan.

The 30-day objection period specified in this proposed rule is the same as the BLM protest process. This proposed rule does not specify a time limit for Agency responses. This proposed rule has adopted the BLM requirement that the reviewing officer promptly render a decision on the objection. To move forward it is in the interest of the Agency to render a decision promptly. This proposed rule does not include details about responding to objections because this information is more appropriately placed in the Forest Service directives (FSH 1909.12, chapter 50).

Section 219.13(a)(1) discusses appeals of plan amendments in site-specific decisions. The Agency specifies specific requirements for administrative review of plan amendments approved contemporaneously with a project or activity decision in 36 CFR 215 and 218, subpart A.

Section 219.14—Effective Dates and Transition

This section specifies when a plan, plan amendment, or plan revision will take effect as well as how responsible officials may modify ongoing planning efforts.

This section defines, for pending or future plan documents, the applicable rules during the transition period. During the transition period, pending or proposed projects remain subject to the applicable forest plan.

This section allows amendment of land management plans that have not yet implemented an EMS using the provisions of the planning regulations in effect before November 9, 2000 (See 36 CFR parts 200 to 299, Revised as of July 1, 2000), if the responsible official provides public notice during the transition period which may be up to three years. Plan revisions or development of new plans initiated before the effective date of this rule may continue under the provisions of the planning regulations in effect before November 9, 2000 or conform to this rule once the unit has established an EMS. Except for the Tongass National Forest, plan revisions or development of new plans initiated after the effective date of this rule must conform to this rule, which requires the unit to have established an EMS.

Paragraph (d)(1) of this section includes transition wording to allow the Tongass National Forest to revise its plan either under the proposed rule or the planning regulations in effect before November 9, 2000 (1982 planning rule). The Agency previously published this wording on March 3, 2006 in the **Federal Register** (71 FR 10837). This was in response to the August 5, 2005, Ninth Circuit Court of Appeals decision in *Natural Resources Defense Council* v. *U.S. Forest Service,* 421 F.3d 797, that found defects in the 1997 Final EIS and Record of Decision for the Tongass Land Management Plan. The court's analysis of the 1997 forest plan was made in the context of the 1982 planning rule. For this unique situation, this proposed rule at 36 CFR 219.14(d)(1) allows the Tongass National Forest land management plan to be revised using either the 1982 planning rule or the 2005 planning rule. The Tongass National Forest mailed out a Draft Environmental Impact Statement for the Tongass Land and Resource Management Plan Amendment on January 4, 2007. The Forest Supervisor is currently reviewing the comments and will eventually finish the plan amendment process. Because the amendment is still in process and the Agency must change the Tongass Land Management Plan in response to the court decision, we are proposing the exception to remain as a contingency.

This section also proposes direction on application of management indicator species (MIS) for units that will continue to use the 1982 planning rule for plans, plan amendments, and plan revisions during transition. There has been uncertainty about the application of provisions of the 1982 planning rule, particularly for obligations for MIS (69 FR 58055, September 29, 2004). For those units with plans developed, amended, or revised under the 1982 planning rule, including those amended or revised during the transition period for the 2000 planning rule, § 219.14(f) provides that MIS obligations may be met by considering data and analysis for habitat unless the plan specifically requires population monitoring or population surveys. Other tools can often be useful and more appropriate in predicting the effects of projects developed under a land management plan (such as examining the effect of proposed activities on the habitat of specific species); using information identified, obtained, or developed through a variety of methods (such as assessments, analysis, and monitoring results); or using information obtained from other sources (such as State fish and wildlife agencies and organizations like The Nature Conservancy). This proposed rule also clarifies that the appropriate scale for any MIS monitoring is the plan area.

Providing explicitly for MIS monitoring flexibility will allow

monitoring of habitat conditions as a surrogate for population trend data. It is appropriate for a range of methods to be available to estimate, or approximate, population trends for MIS. The responsible official will determine which monitoring method or combination of monitoring methods to use for a given MIS.

Where responsible officials conduct actual population monitoring for MIS, population trend data are most efficiently collected using a sampling program rather than an enumeration. In a sampling program, population data are collected at a selection of sites throughout the geographic range of the population. These sites might be systematically designated (for example, using a grid of specific dimension), established randomly, or selected in some other way. For species that use distinct seasonal ranges (for example, elk that use winter ranges distinct from their summer ranges), data may be collected mainly on the winter range.

The sampling area should relate to the geographic range occupied by the population, and will usually far exceed the area of one project. Because of using sampling procedures in the geographic area used by a population, individual project areas might or might not be part of a sampling program designed to estimate the population. Based on the foregoing, for most species it would be technically and practically inappropriate to conduct population trend sampling at the scale of individual project areas. Consequently, where responsible officials conduct population monitoring for MIS, that monitoring should be carried out at the scale most appropriate to the species within the overall national forest, grassland, prairie, or other administrative comparable unit. Monitoring populations at the sites of individual projects is not part of this requirement. Therefore, the transition wording at § 219.14 clarifies that MIS monitoring is appropriate at the times and places appropriate to the specific species, and is not required in individual project or activity areas.

Section 219.15—Severability

The Agency has proposed a section to discuss the issue of severability, so that, if parts of this proposed rule are separately challenged in litigation, individual provisions of this rule can be severed from other parts of the rule.

Section 219.16—Definitions

This section sets out and defines the special terms used in this proposed rule.

5. Regulatory Certifications

Regulatory Impact

The Agency reviewed this proposed rule under U.S. Department of Agriculture (Department) procedures and Executive Order 12866 issued September 30, 1993 (E.O. 12866), as amended by E.O. 13422 on Regulatory Planning and Review. On all substantial matters, this proposed rule is identical to the rule on land management planning published as a final rule in the **Federal Register** at 70 FR 1034 (January 5, 2005) (also referred to as the 2005 planning rule). Therefore, the Agency has determined that documents, studies, and other analyses reporting regulatory, economic, civil rights, energy, and other potential impacts of the 2005 planning rule are also applicable to this proposed rule.

It has been determined that this proposed rule is not an economically significant rule. This proposed rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This proposed rule will neither interfere with an action taken or planned by another Agency nor raise new legal or policy issues. Finally, this proposed rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because of the extensive interest in National Forest System (NFS) planning and decisionmaking, this proposed rule has been designated as significant and, therefore, is subject to Office of Management and Budget review under E.O. 13422.

An analysis was conducted to compare the costs and benefits of implementing the proposed rule to the baseline, the 2000 planning rule. This analysis is posted on the World Wide Web/Internet at *http://www.fs.fed.us/emc/nfma/2007_planning_rule.html*, along with other documents associated with this proposed rule. The 2000 planning rule was used as the baseline because it is the no action alternative (Alternative B). Quantitative differences between this proposed rule, and the other alternatives were also estimated. Alternatives included Alternative C (the 1982 planning rule), Alternative D (2005 planning rule modified to not include the EMS requirement), Alternative E (2005 planning rule modified to not include EMS and explicitly include timber requirements in the rule and standards as plan components). Primary sources of data used to estimate the costs and benefits of the 2000 planning rule are from the results of a 2002 report entitled ''A Business Evaluation of the 2000 and Proposed NFMA Rules'' produced by the Inventory and Monitoring Institute of the Forest Service. The report is also identified as the ''2002 NFMA Costing Study,'' or simply as the ''Costing Study.'' The Costing Study used a business modeling process to identify and compare major costs for the 2000 planning rule. The main source of data used to approximate costs under the 1982 planning rule is from a 2002 report to Congress on planning costs, along with empirical data and inferences from the Costing Study.

The cost-benefit analysis focuses on key activities in land management planning for which costs can be estimated under the 1982 planning rule, the 2000 planning rule, the proposed rule and the other alternative rules. The key activities for which costs were analyzed include regional guides, collaboration, consideration of science, evaluation of the sustainability of decisions and diversity requirements under the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 1600 *et seq.*), monitoring, evaluation, and the resolution of disputes about the proposed plan decisions through the administrative processes of appeals and objections.

The proposed rule would reduce the cost of producing a plan or revision by shortening the length of the planning process and providing the responsible official with more flexibility to decide the scope and scale of the planning process. The proposed rule would require a comprehensive evaluation during plan development and plan revision that would be updated at least every 5 years. Some upfront planning costs, such as analyzing and developing plan components, and documenting the land management planning process, are anticipated to shift to monitoring and evaluation to better document cumulative effects of management activities and natural events when preparing a comprehensive evaluation of the plan under the proposed rule.

Based on costs that can be quantified, carrying out this proposed rule is expected to have an estimated annual average cost savings of $30.8 million when compared to the 2000 planning rule, and an estimated annual average savings of $5.4 million when compared to estimates of the 1982 planning rule. From this cost-benefit analysis, the estimated total costs for carrying out the proposed rule are expected to be lower than the 2000 planning rule.

Total Agency costs for carrying out the proposed rule, the 2000 rule, 1982 rule and other alternative rules were discounted at 3 percent and 7 percent discount rates for the 15-year period from 2008 to 2022; then annualized costs were calculated for these alternatives. By using 3 percent discount rate, the annualized cost for the proposed rule was estimated at $99 million, while the annualized costs for the 2000 rule was $129 million and for the 1982 rule was $104 million. The Agency expects the proposed rule to have an annualized cost savings of about $30 million when compared to the 2000 planning rule, and an estimated annualized savings of $5 million when compared to estimates of the 1982 planning rule.

While using a 7 percent discount rate for the same timeframe, the results show that the annualized cost estimate for the proposed rule is $99.2 million and the estimated annualized cost for the 2000 rule and the 1982 planning rule are $127.2 million and $103.2 million respectively. Based on these annualized cost estimates at 7 percent discount rate, use of this proposed rule is expected to have an annualized cost savings of $28 million when compared to the 2000 planning rule, and an estimated annualized savings of $4 million when compared to estimates of the 1982 planning rule. This quantitative assessment indicates a cost savings for the Agency using the proposed rule.

This proposed rule has also been considered in light of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small business entities as defined by the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required for this proposed rule. The proposed rule imposes no requirements on either small or large entities. Rather, the proposed rule sets out the process the Forest Service will follow in land management planning for the NFS. The proposed rule should provide opportunities for small businesses to become involved in the national forest, grassland, prairie, or other comparable administrative unit plan approval. Moreover, by streamlining the land management planning process, the proposed rule should benefit small businesses through more timely decisions that affect outputs of products and services.

Environmental Impacts

This proposed rule establishes the administrative procedures to guide development, amendment, and revision of NFS land management plans. This proposed rule, like earlier planning rules, does not dictate how administrative units of the NFS are to be managed. The Agency does not expect that this proposed rule will directly affect the mix of uses on any or all units of the NFS. Section 31.12 of FSH 1909.15 excludes from documentation in an EA or EIS ''rules, regulations, or policies to establish Servicewide administrative procedures, program processes, or instruction.'' The Agency believes that this proposed rule falls squarely within this category of actions and that no extraordinary circumstances exist that would require preparation of an EA or an EIS. However, due to the court's decision in *Citizens for Better Forestry et al.* v. *U.S. Department of Agriculture,* No. C 05–1144 PJH from the U.S. District Court in the Northern District of California, (March 30, 2007) and the Agency's desire to reform the planning process, the Agency has determined to prepare an environmental impact statement to analyze possible environmental effects of the proposed rule and present several alternatives to the proposed rule and potential environmental impacts of those alternatives. An environmental impact statement (EIS) is being developed concurrently with this rulemaking. The Draft EIS is available on the Internet at *http://www.fs.fed.us/emc/nfma/2007_planning_rule.html*. The draft EIS explains that there are no environmental impacts resulting from the promulgation of this proposed rule.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 issued May 18, 2001 (E.O. 13211), ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' It has been determined that this proposed rule does not constitute a significant energy action as defined in E.O. 13211.This proposed rule would guide the development, amendment, and revision of NFS land management plans. These plans are strategic documents that provide the guidance for making future project or activity-level resource management decisions. As such, these plans will address access requirements associated with energy exploration and development within the framework of multiple-use, sustained-yield management of the surface resources of the NFS lands. These land management plans may identify major rights-of-way corridors for utility transmission lines, pipelines, and water canals. While these plans may consider the need for such facilities, they do not authorize construction of them; therefore, the proposed rule and the plans developed under it do not have energy effects within the meaning of E.O. 13211. The effects of the construction of such lines, pipelines, and canals are, of necessity, considered on a case-by-case basis as specific construction proposals. Consistent with E.O. 13211, direction to incorporate consideration of energy supply, distribution, and use in the planning process will be included in the Agency's administrative directives for carrying out the proposed rule.

Controlling Paperwork Burdens on the Public

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or reporting requirements for the objection process were previously approved by the Office of Management and Budget (OMB) and assigned control number 0596–0158, expiring on December 31, 2006, for the 2005 planning rule. The OMB has extended this approval, effective January 31, 2007, using the same control number. This extension was made after the Forest Service provided the public an opportunity to comment on the extension as required by the Paperwork Reduction Act (71 FR 40687, July 18, 2006). The Forest Service received one comment about extension.

The information required by 36 CFR 219.13 is needed for an objector to explain the nature of the objection being made to a proposed land management plan, plan amendment, or plan revision. This proposed rule retains but simplifies the objection process established in the 2000 planning rule. The proposed rule removes the requirements previously provided in the 2000 planning rule for interested parties, publication of objections, and formal requests for meetings (36 CFR 219.32). These changes have resulted in a minor reduction in the number of burden hours approved by OMB for the 2000 planning rule.

Federalism

The Agency has considered this proposed rule under the requirements of Executive Order 13132 issued August 4, 1999 (E.O. 13132), ''Federalism.'' The Agency has made an assessment that the proposed rule conforms with the Federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of

power and responsibilities among the various levels of government. Therefore, the Agency concludes that this proposed rule does not have Federalism implications. Moreover, § 219.9 of this proposed rule shows sensitivity to Federalism concerns by requiring the responsible official to meet with and provide opportunities for involvement of State and local governments in the planning process.

In the spirit of E.O. 13132, the Agency consulted with State and local officials, including their national representatives, early in the process of developing the proposed regulation. The Agency has consulted with the Western Governors' Association and the National Association of Counties to obtain their views on a preliminary draft of the 2002 proposed rule. The Western Governors' Association supported the general intent to create a regulation that works, and placed importance on the quality of collaboration to be provided when the Agency implements the regulation. Agency representatives also contacted the International City and County Managers Association, National Conference of State Legislators, The Council of State Governments, Natural Resources Committee of the National Governors Association, U.S. Conference of Mayors, and the National League of Cities to share information about the 2002 proposed rule prior to its publication. Based on comments received on the 2002 proposed rule, the Agency has determined that additional consultation was not needed with State and local governments for the promulgation of the 2005 planning rule, and thus this proposed rule. State and local governments are encouraged to comment on this proposed rule, in the course of this rulemaking process.

Consultation With Indian Tribal Governments

Pursuant to Executive Order 13175 of November 6, 2000, ''Consultation and Coordination with Indian Tribal Governments,'' the Agency has assessed the impact of this proposed rule on Indian Tribal governments and has determined that the proposed rule does not significantly or uniquely affect communities of Indian tribal governments. The proposed rule deals with the administrative procedures to guide the development, amendment, and revision of NFS land management plans and, as such, has no direct effect about the occupancy and use of NFS land. At § 219.9(a)(3), the proposed rule requires consultation with federally recognized tribes when conducting land management planning.

The Agency has also determined that this proposed rule does not impose substantial direct compliance costs on Indian Tribal governments. This proposed rule does not mandate Tribal participation in NFS planning. Rather, the proposed rule imposes an obligation on Forest Service officials to consult early with Tribal governments and to work cooperatively with them where planning issues affect Tribal interests.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 issued March 15, 1988, and it has been determined that the proposed rule does not pose the risk of a taking of private property.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this proposed rule, (1) all State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule will be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) this proposed rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of this proposed rule on State, local, and Tribal governments and the private sector. This proposed rule does not compel the expenditure of $100 million or more by any State, local, or Tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, National forests, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, it is proposed to revise part 219 of title 36 of the Code of Federal Regulations to read as follows:

PART 219—PLANNING

Subpart A—National Forest System Land Management Planning

Sec.

219.1 Purpose and applicability.
219.2 Levels of planning and planning authority.
219.3 Nature of land management planning.
219.4 National Environmental Policy Act compliance.
219.5 Environmental management systems.
219.6 Evaluations and monitoring.
219.7 Developing, amending, or revising a plan.
219.8 Application of a new plan, plan amendment, or plan revision.
219.9 Public participation, collaboration, and notification.
219.10 Sustainability.
219.11 Role of science in planning.
219.12 Suitable uses and provisions required by NFMA.
219.13 Objections to plans, plan amendments, or plan revisions.
219.14 Effective dates and transition.
219.15 Severability.
219.16 Definitions.

Subpart B—[Reserved]

Authority: 5 U.S.C. 301; 16 U.S.C. 1604, 1613.

§ 219.1 Purpose and applicability.

(a) The rules of this subpart set forth a process for land management planning, including the process for developing, amending, and revising land management plans (also referred to as plans) for the National Forest System, as required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*), hereinafter referred to as NFMA. This subpart also describes the nature and scope of plans and sets forth the required components of a plan. This subpart is applicable to all units of the National Forest System as defined by 16 U.S.C. 1609 or subsequent statute.

(b) Consistent with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531), the overall goal of managing the National Forest System is to sustain the multiple uses of its renewable resources in perpetuity while maintaining the long-term productivity of the land. Resources are to be managed so they are utilized in the combination that will best meet the needs of the American people. Maintaining or restoring the health of the land enables the National Forest System to provide a sustainable flow of uses, benefits, products, services, and visitor opportunities.

(c) The Chief of the Forest Service shall establish planning procedures for this subpart for plan development, plan amendment, or plan revision in the Forest Service Directive System.

§ 219.2 Levels of planning and planning authority.

Planning occurs at multiple organizational levels and geographic areas.

(a) *National.* The Chief of the Forest Service is responsible for national planning, such as preparation of the Forest Service Strategic Plan required under the Government Performance and Results Act of 1993 (5 U.S.C. 306; 31 U.S.C. 1115–1119; 31 U.S.C. 9703–9704), which is integrated with the requirements of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the NFMA. The Strategic Plan establishes goals, objectives, performance measures, and strategies for management of the National Forest System, as well as the other Forest Service mission areas.

(b) *Forest, grassland, prairie, or other comparable administrative unit.*

(1) Land management plans provide broad guidance and information for project and activity decisionmaking in a national forest, grassland, prairie, or other comparable administrative unit. The Supervisor of the National Forest, Grassland, Prairie, or other comparable administrative unit is the responsible official for development and approval of a plan, plan amendment, or plan revision for lands under the responsibility of the Supervisor, unless a Regional Forester, the Chief, or the Secretary chooses to act as the responsible official.

(2) When plans, plan amendments, or plan revisions are prepared for more than one administrative unit, a unit Supervisor identified by the Regional Forester, or the Regional Forester, the Chief, or the Secretary may be the responsible official. Two or more responsible officials may undertake joint planning over lands under their respective jurisdictions.

(3) The appropriate Station Director must concur with that part of a plan applicable to any experimental forest within the plan area.

(c) *Projects and activities.* The Supervisor or District Ranger is the responsible official for project and activity decisions, unless a higher-level official chooses to act as the responsible official. Requirements for project or activity planning are established in the Forest Service Directive System. Except as specifically provided, none of the requirements of this subpart applies to projects or activities.

(d) *Developing, amending, and revising plans*—(1) *Plan development.* If a new national forest, grassland, prairie, or other administrative unit of the National Forest System is established, the Regional Forester, or a forest, grassland, prairie, or other comparable unit Supervisor identified by the Regional Forester must either develop a plan for the unit or amend or revise an existing plan to apply to the lands within the new unit.

(2) *Plan amendment.* The responsible official may amend a plan at any time.

(3) *Plan revision.* The responsible official must revise the plan if the responsible official concludes that conditions within the plan area have significantly changed. Unless otherwise provided by law, a plan must be revised at least every 15 years.

§ 219.3 Nature of land management planning.

(a) *Principles of land management planning.* Land management planning is an adaptive management process that includes social, economic, and ecological evaluation; plan development, plan amendment, and plan revision; and monitoring. The overall aim of planning is to produce responsible land management for the National Forest System based on useful and current information and guidance. Land management planning guides the Forest Service in fulfilling its responsibilities for stewardship of the National Forest System to best meet the needs of the American people.

(b) *Force and effect of plans.* Plans developed in accordance with this subpart generally contain desired conditions, objectives, and guidance for project and activity decisionmaking in the plan area. Plans do not grant, withhold, or modify any contract, permit, or other legal instrument, subject anyone to civil or criminal liability, or create any legal rights. Plans typically do not approve or execute projects and activities. Decisions with effects that can be meaningfully evaluated (40 CFR 1508.23) typically are made when projects and activities are approved.

§ 219.4 National Environmental Policy Act compliance.

(a) In accordance with 16 U.S.C. 1604(g)(1) this subpart clarifies how the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4346) (hereinafter referred to as NEPA) applies to National Forest System land management planning.

(b) Approval of a plan, plan amendment, or plan revision, under the authority of this subpart, will be done in accordance with the Forest Service NEPA procedures and may be categorically excluded from NEPA documentation under an appropriate category provided in such procedures.

(c) Nothing in this subpart alters the application of NEPA to proposed projects and activities.

(d) Monitoring and evaluations, including those required by § 219.6, may be used or incorporated by reference, as appropriate, in applicable NEPA documents.

§ 219.5 Environmental management systems.

The responsible official must establish an environmental management system (EMS) for each unit of the National Forest System. The scope of an EMS will include, at the minimum, the land management planning process defined by this subpart. An EMS for any unit may include environmental aspects unrelated to the land management planning process under this subpart.

(a) Plan development, plan amendment, or plan revision must be completed in accordance with the EMS and § 219.14. An EMS may be established independently of the planning process.

(b) The EMS must conform to the consensus standard developed by the International Organization for Standardization (ISO) and adopted by the American National Standards Institute (ANSI) as ''ISO 14001: Environmental Management Systems—Specification With Guidance For Use'' (ISO 14001). The ISO 14001 describes EMSs and outlines the elements of an EMS. The ISO 14001 is available from the ANSI Web site at *http://webstore.ansi.org/ansidocstore/default.asp*.

(c) Pursuant to § 219.1(c), the Chief of the Forest Service shall establish procedures in the Forest Service Directive System to ensure that appropriate EMSs are in place. The responsible official may determine whether and how to change and improve an EMS for the plan area, consistent with applicable Forest Service Directive System procedures.

§ 219.6 Evaluations and monitoring.

(a) *Evaluations.* The responsible official shall keep the plan set of documents up to date with evaluation reports, which will reflect changing conditions, science, and other relevant information. The following three types of evaluations are required for land management planning: Comprehensive evaluations for plan development and revision, evaluations for plan amendment, and annual evaluations of monitoring information. The responsible official shall document evaluations in evaluation reports, make these reports available to the public as required in § 219.9, and include these

reports in the plan set of documents (§ 219.7(a)(1)). Evaluations under this section should be commensurate to the level of risk or benefit associated with the nature and level of expected management activities in the plan area.

(1) *Comprehensive evaluations.* These evaluate current social, economic, and ecological conditions and trends that contribute to sustainability, as described in § 219.10. Comprehensive evaluations and comprehensive evaluation reports must be updated at least every five years to reflect any substantial changes in conditions and trends since the last comprehensive evaluation. The responsible official must ensure that comprehensive evaluations, including any updates necessary, include the following elements:

(i) *Area of analysis.* The area(s) of analysis must be clearly identified.

(ii) *Conditions and trends.* The current social, economic, and ecological conditions and trends and substantial changes from previously identified conditions and trends must be described based on available information, including monitoring information, surveys, assessments, analyses, and other studies as appropriate. Evaluations may build upon existing studies and evaluations.

(2) *Evaluation for a plan amendment.* An evaluation for a plan amendment must analyze the issues relevant to the purposes of the amendment and may use the information in comprehensive evaluations relevant to the plan amendment. When a plan amendment is made contemporaneously with, and only applies to, a project or activity decision, the analysis prepared for the project or activity satisfies the requirements for an evaluation for an amendment.

(3) *Annual evaluation of the monitoring information.* Monitoring results must be evaluated annually and in accordance with paragraph (b)(2) of this section.

(b) *Monitoring.* The plan must describe the monitoring program for the plan area. Monitoring information in the *plan document or set of documents* may be changed and updated as appropriate, at any time. Such changes and updates are administrative corrections (§ 219.7(b)) and do not require a plan amendment or revision.

(1) The plan-monitoring program shall be developed with public participation and take into account:

(i) Financial and technical capabilities;

(ii) Key social, economic, and ecological performance measures relevant to the plan area: and

(iii) The best available science.

(2) The plan-monitoring program shall provide for:

(i) Monitoring to determine whether plan implementation is achieving multiple use objectives;

(ii) Monitoring to determine the effects of the various resource management activities within the plan area on the productivity of the land;

(iii) Monitoring of the degree to which on-the-ground management is maintaining or making progress toward the desired conditions and objectives for the plan; and

(iv) Adjustment of the monitoring program as appropriate to account for unanticipated changes in conditions.

(3) The responsible official may conduct monitoring jointly with others, including but not limited to, Forest Service units, Federal, State or local government agencies, federally recognized Indian Tribes, and members of the public.

§ 219.7 Developing, amending, or revising a plan.

(a) *General planning requirements*—(1) *Plan documents or set of documents.* The responsible official must maintain a *plan document or set of documents* for the plan. A plan document or set of documents includes, but is not limited to, evaluation reports; documentation of public involvement; the plan, including applicable maps; applicable plan approval documents; applicable NEPA documents, if any; the monitoring program for the plan area; and documents relating to the EMS established for the unit.

(2) *Plan components.* Plan components may apply to all or part of the plan area. A plan should include the following components:

(i) *Desired conditions.* Desired conditions are the social, economic, and ecological attributes toward which management of the land and resources of the plan area is to be directed. Desired conditions are aspirations and are not commitments or final decisions approving projects and activities, and may be achievable only over a long time period.

(ii) *Objectives.* Objectives are concise projections of measurable, time-specific intended outcomes. The objectives for a plan are the means of measuring progress toward achieving or maintaining desired conditions. Like desired conditions, objectives are aspirations and are not commitments or final decisions approving projects and activities.

(iii) *Guidelines.* Guidelines provide information and guidance for project and activity decisionmaking to help achieve desired conditions and objectives. Guidelines are not commitments or final decisions approving projects and activities.

(iv) *Suitability of areas.* Areas of each National Forest System unit are identified as generally suitable for various uses (§ 219.12). An area may be identified as generally suitable for uses that are compatible with desired conditions and objectives for that area. The identification of an area as generally suitable for a use is guidance for project and activity decisionmaking and is not a commitment or a final decision approving projects and activities. Uses of specific areas are approved through project and activity decisionmaking.

(v) *Special areas.* Special areas are areas within the National Forest System designated because of their unique or special characteristics. Special areas such as botanical areas or significant caves may be designated, by the responsible official in approving a plan, plan amendment, or plan revision. Such designations are not final decisions approving projects and activities. The plan may also recognize special areas designated by statute or through a separate administrative process in accordance with NEPA requirements (§ 219.4) and other applicable laws.

(3) *Changing plan components.* Plan components may be changed through plan amendment or revision, or through an administrative correction in accordance with § 219.7(b).

(4) *Planning authorities.* The responsible official has the discretion to determine whether and how to change the plan, subject to the requirement that the plan be revised at least every 15 years. A decision by a responsible official about whether or not to initiate the plan amendment or plan revision process and what issues to consider for plan development, plan amendment, or plan revision is not subject to objection under this subpart (§ 219.13).

(5) *Plan process.*

(i) Required evaluation reports, plan, plan amendments, and plan revisions must be prepared by an interdisciplinary team; and

(ii) Unless otherwise provided by law, all National Forest System lands possessing wilderness characteristics must be considered for recommendation as potential wilderness areas during plan development or revision.

(6) *Developing plan options.* In the collaborative and participatory process of land management planning, the responsible official may use an iterative approach in development of a plan, plan amendment, and plan revision in which plan options are developed and narrowed successively. The key steps in

this process shall be documented in the plan set of documents.

(b) *Administrative corrections.* Administrative corrections may be made at any time, and are not plan amendments or revisions. Administrative corrections include the following:

(1) Corrections and updates of data and maps;

(2) Corrections of typographical errors or other non-substantive changes;

(3) Changes in the monitoring program and monitoring information (§ 219.6(b));

(4) Changes in timber management projections; and

(5) Other changes in the plan document or set of documents, except for substantive changes in the plan components.

(c) *Approval document.* The responsible official must record approval of a new plan, plan amendment, or plan revision in a plan approval document, which must include:

(1) The rationale for the approval of the plan, plan amendment, or plan revision;

(2) Concurrence by the appropriate Station Director with any part of the plan applicable to any experimental forest within the plan area, in accordance with § 219.2(b)(3);

(3) A statement of how the plan, plan amendment, or plan revision applies to approved projects and activities, in accordance with § 219.8;

(4) Science documentation, in accordance with § 219.11; and

(5) The effective date of the approval (§ 219.14(a)).

§ 219.8 Application of a new plan, plan amendment, or plan revision.

(a) *Application of a new plan, plan amendment, or plan revision to existing authorizations and approved projects or activities.*

(1) The responsible official must include in any document approving a plan amendment or revision a description of the effects of the plan, plan amendments, or plan revision on existing occupancy and use, authorized by permits, contracts, or other instruments implementing approved projects and activities. If not expressly excepted, approved projects and activities must be consistent with applicable plan components, as provided in paragraph (e) of this section. Approved projects and activities are those for which a responsible official has signed a decision document.

(2) Any modifications of such permits, contracts, or other instruments necessary to make them consistent with applicable plan components as developed, amended, or revised are subject to valid existing rights. Such modifications should be made as soon as practicable following approval of a new plan, plan amendment, or plan revision.

(b) *Application of a new plan, plan amendment, or plan revision to authorizations and projects or activities subsequent to plan approval.* Decisions approving projects and activities subsequent to approval of a plan, plan amendment, or plan revision must be consistent with the plan as provided in paragraph (e) of this section.

(c) *Application of a plan.* Plan provisions remain in effect until the effective date of a new plan, plan amendment, or plan revision.

(d) *Effect of new information on projects or activities.* Although new information will be considered in accordance with Agency NEPA procedures, nothing in this subpart requires automatic deferral, suspension, or modification of approved decisions in light of new information.

(e) *Ensuring project or activity consistency with plans.* Projects and activities must be consistent with the applicable plan. If an existing (paragraph (a) of this section) or proposed (paragraph (b) of this section) use, project, or activity is not consistent with the applicable plan, the responsible official may take one of the following steps, subject to valid existing rights:

(1) Modify the project or activity to make it consistent with the applicable plan components;

(2) Reject the proposal or terminate the project or activity, subject to valid existing rights; or

(3) Amend the plan contemporaneously with the approval of the project or activity so that it will be consistent with the plan as amended. The amendment may be limited to apply only to the project or activity.

§ 219.9 Public participation, collaboration, and notification.

The responsible official must use a collaborative and participatory approach to land management planning, in accordance with this subpart and consistent with applicable laws, regulations, and policies, by engaging the skills and interests of appropriate combinations of Forest Service staff, consultants, contractors, other Federal agencies, federally recognized Indian Tribes, State or local governments, or other interested or affected communities, groups, or persons.

(a) *Providing opportunities for participation.* The responsible official must provide opportunities for the public to collaborate and participate openly and meaningfully in the planning process, taking into account the discrete and diverse roles, jurisdictions, and responsibilities of interested and affected parties. Specifically, as part of plan development, plan amendment, and plan revision, the responsible official shall involve the public in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program. The responsible official has the discretion to determine the methods and timing of public involvement opportunities.

(1) *Engaging interested individuals and organizations.* The responsible official must provide for and encourage collaboration and participation by interested individuals and organizations, including private landowners whose lands are within, adjacent to, or otherwise affected by future management actions within the plan area.

(2) *Engaging State and local governments and Federal agencies.* The responsible official must provide opportunities for the coordination of Forest Service planning efforts undertaken in accordance with this subpart with those of other resource management agencies. The responsible official also must meet with and provide early opportunities for other government agencies to be involved, collaborate, and participate in planning for National Forest System lands. The responsible official should seek assistance, where appropriate, from other State and local governments, Federal agencies, and scientific and academic institutions to help address management issues or opportunities.

(3) *Engaging Tribal governments.* The Forest Service recognizes the Federal Government's trust responsibility for federally recognized Indian Tribes. The responsible official must consult with, invite, and provide opportunities for federally recognized Indian Tribes to collaborate and participate in planning. In working with federally recognized Indian Tribes, the responsible official must honor the government-to-government relationship between Tribes and the Federal Government.

(b) *Public notification.* The following public notification requirements apply to plan development, amendment, or revision, except when a plan amendment is approved contemporaneously with approval of a project or activity and the amendment

applies only to the project or activity, in which case 36 CFR part 215 or part 218, subpart A, applies:

(1) *When formal public notification is provided.* Public notification must be provided at the following times:

(i) Initiation of development of a plan, plan amendment, or plan revision;

(ii) Commencement of the 90-day comment period on a proposed plan, plan amendment, or plan revision;

(iii) Commencement of the 30-day objection period prior to approval of a plan, plan amendment, or plan revision;

(iv) Approval of a plan, plan amendment, or plan revision; and

(v) Adjustment to conform to this subpart of a planning process for a plan, plan amendment, or plan revision initiated under the provisions of a previous planning regulation.

(2) *How public notice is provided.* Public notice must be provided in the following manner:

(i) All required public notices applicable to a new plan, plan revision, or adjustment of any ongoing plan revision as provided at § 219.14(e) must be published in the **Federal Register** and newspaper(s) of record.

(ii) Required notifications that are associated with a plan amendment or adjustment of any ongoing plan amendment as provided at § 219.14(e) and that apply to one plan must be published in the newspaper(s) of record. Required notifications that are associated with plan amendments and adjustment of any ongoing plan amendments (as provided at § 219.14(e)) and that apply to more than one plan must be published in the **Federal Register**.

(iii) Public notification of evaluation reports and monitoring program changes may be made in a manner deemed appropriate by the responsible official.

(3) *Content of the public notice.* Public notices must contain the following information:

(i) *Content of the public notice for initiating a plan development, plan amendment, or plan revision.* The notice must inform the public of the documents available for review and how to obtain them; provide a summary of the need to develop a plan or change a plan; invite the public to comment on the need for change in a plan and to identify any other need for change in a plan that they feel should be addressed during the planning process; and provide an estimated schedule for the planning process, including the time available for comments, and inform the public how to submit comments.

(ii) *Content of the public notice for a proposed plan, plan amendment, or plan revision.* The notice must inform the public of the availability of the proposed plan, plan amendment, or plan revision, including any relevant evaluation report; the commencement of the 90-day comment period; and the process for submitting comments.

(iii) *Content of the public notice for a plan, plan amendment, or plan revision prior to approval.* The notice must inform the public of the availability of the plan, plan amendment, or plan revision; any relevant evaluation report; and the commencement of the 30-day objection period; and the process for objecting.

(iv) *Content of the public notice for approval of a plan, plan amendment, or plan revision.* The notice must inform the public of the availability of the approved plan, plan amendment, or plan revision, the approval document, and the effective date of the approval (§ 219.14(a)).

(v) *Content of the public notice for an adjustment to an ongoing planning process.* The notice must state how a planning process initiated before the transition period (§ 219.14(b) and (e)) will be adjusted to conform to this subpart.

§ 219.10 Sustainability.

Sustainability, for any unit of the National Forest System, has three interrelated and interdependent elements: Social, economic, and ecological. A plan can contribute to sustainability by creating a framework to guide on-the-ground management of projects and activities; however, a plan by itself cannot ensure sustainability. Agency authorities, the nature of a plan, and the capabilities of the plan area are some of the factors that limit the extent to which a plan can contribute to achieving sustainability.

(a) *Sustaining social and economic systems.* The overall goal of the social and economic elements of sustainability is to contribute to sustaining social and economic systems within the plan area. To understand the social and economic contributions that National Forest System lands presently make, and may make in the future, the responsible official, in accordance with § 219.6, must evaluate relevant economic and social conditions and trends as appropriate during plan development, plan amendment, or plan revision.

(b) *Sustaining ecological systems.* The overall goal of the ecological element of sustainability is to provide a framework to contribute to sustaining native ecological systems by providing ecological conditions to support diversity of native plant and animal species in the plan area. This will satisfy the statutory requirement to provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives (16 U.S.C. 1604(g)(3)(B)). Procedures developed pursuant to § 219.1(c) for sustaining ecological systems must be consistent with the following:

(1) *Ecosystem diversity.* Ecosystem diversity is the primary means by which a plan contributes to sustaining ecological systems. Plan components must establish a framework to provide the characteristics of ecosystem diversity in the plan area.

(2) *Species diversity.* If the responsible official determines that provisions in plan components, in addition to those required by paragraph (b)(1) of this section, are needed to provide appropriate ecological conditions for specific threatened and endangered species, species-of-concern, and species-of-interest, then the plan must include additional provisions for these species, consistent with the limits of Agency authorities, the capability of the plan area, and overall multiple use objectives.

§ 219.11 Role of science in planning.

(a) The responsible official must take into account the best available science. For purposes of this subpart, taking into account the best available science means the responsible official must:

(1) Document how the best available science was taken into account in the planning process within the context of the issues being considered;

(2) Evaluate and disclose substantial uncertainties in that science;

(3) Evaluate and disclose substantial risks associated with plan components based on that science; and

(4) Document that the science was appropriately interpreted and applied.

(b) To meet the requirements of paragraph (a) of this section, the responsible official may use independent peer review, a science advisory board, or other review methods to evaluate the consideration of science in the planning process.

§ 219.12 Suitable uses and provisions required by NFMA.

(a) *Suitable uses.*

(1) *Identification of suitable land uses.* National Forest System lands are generally suitable for a variety of multiple uses, such as outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The responsible official, as appropriate, shall identify areas within a National Forest System unit as generally suitable for uses that are compatible with desired

conditions and objectives for that area. Such identification is guidance for project and activity decisionmaking, is not a permanent land designation, and is subject to change through plan amendment or plan revision. Uses of specific areas are approved through project and activity decisionmaking.

(2) *Identification of lands not suitable for timber production.*

(i) The responsible official must identify lands within the plan area as not suitable for timber production (§ 219.16) if:

(A) Statute, Executive order, or regulation prohibits timber production on the land; or

(B) The Secretary of Agriculture or the Chief of the Forest Service has withdrawn the land from timber production; or

(C) The land is not forest land (as defined at § 219.16); or

(D) Timber production would not be compatible with the achievement of desired conditions and objectives established by the plan for those lands.

(ii) This identification is not a final decision compelling, approving, or prohibiting projects and activities. A final determination of suitability for timber production is made through project and activity decisionmaking. Salvage sales or other harvest necessary for multiple-use objectives other than timber production may take place on areas that are not suitable for timber production.

(b) *NFMA requirements.* (1) The Chief of the Forest Service must include in the Forest Service Directive System procedures for estimating the quantity of timber that can be removed annually in perpetuity on a sustained-yield basis in accordance with 16 U.S.C. 1611.

(2) The Chief of the Forest Service must include in the Forest Service Directive System procedures to ensure that plans include the resource management guidelines required by 16 U.S.C. 1604 (g)(3).

(3) Forest Service Directive System procedures adopted to fulfill the requirements of this paragraph shall provide public involvement as described in 36 CFR part 216.

§ 219.13 Objections to plans, plan amendments, or plan revisions.

(a) *Opportunities to object.* Before approving a plan, plan amendment, or plan revision, the responsible official must provide the public 30 calendar days for pre-decisional review and the opportunity to object. Federal agencies may not object under this subpart. During the 30-day review period, any person or organization, other than a Federal agency, who participated in the planning process through the submission of written comments, may object to a plan, plan amendment, or plan revision according to the procedures in this section, except in the following circumstances:

(1) When a plan amendment is approved contemporaneously with a project or activity decision and the plan amendment applies only to the project or activity, in which case the administrative review process of 36 CFR part 215 or part 218, subpart A, applies instead of the objection process established in this section; or

(2) When the responsible official is an official in the Department of Agriculture at a level higher than the Chief of the Forest Service, in which case there is no opportunity for administrative review.

(b) *Submitting objections.* The objection must be in writing and must be filed with the reviewing officer within 30 days following the publication date of the legal notice in the newspaper of record of the availability of the plan, plan amendment, or plan revision. Specific details will be included in the Forest Service Directive System. An objection must contain:

(1) The name, mailing address, and telephone number of the person or entity filing the objection. Where a single objection is filed by more than one person, the objection must indicate the lead objector to contact. The reviewing officer may appoint the first name listed as the lead objector to act on behalf of all parties to the single objection when the single objection does not specify a lead objector. The reviewing officer may communicate directly with the lead objector and is not required to notify the other listed objectors of the objection response or any other written correspondence related to the single objection;

(2) A statement of the issues, the parts of the plan, plan amendment, or plan revision to which the objection applies, and how the objecting party would be adversely affected; and

(3) A concise statement explaining how the objector believes that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy or how the objector disagrees with the decision and providing any recommendations for change.

(c) *Responding to objections.* (1) The reviewing officer (§ 219.16) has the authority to make all procedural determinations related to the objection not specifically explained in this subpart, including those procedures necessary to ensure compatibility, to the extent practicable, with the administrative review processes of other Federal agencies. The reviewing officer must promptly render a written response to the objection. The response must be sent to the objecting party by certified mail, return receipt requested.

(2) The response of the reviewing officer shall be the final decision of the Department of Agriculture on the objection.

(d) *Use of other administrative review processes.* Where the Forest Service is a participant in a multi-Federal agency effort that would otherwise be subject to objection under this subpart, the reviewing officer may waive the objection procedures of this subpart and instead adopt the administrative review procedure of another participating Federal agency. As a condition of such a waiver, the responsible official for the Forest Service must have agreement with the responsible official of the other agency or agencies that a joint agency response will be provided to those who file for administrative review of the multi-agency effort.

(e) *Compliance with the Paperwork Reduction Act.* The information collection requirements associated with submitting an objection have been approved by the Office of Management and Budget and assigned control number 0596–0158.

§ 219.14 Effective dates and transition.

(a) *Effective dates.* A plan, plan amendment, or plan revision is effective 30 days after publication of notice of its approval (§ 219.9(b)), except when a plan amendment is approved contemporaneously with a project or activity and applies only to the project or activity, in which case 36 CFR part 215 or part 218, subpart A, apply.

(b) *Transition period.* For each unit of the National Forest System, the transition period begins on the effective date of this subpart and ends on the unit's establishment of an EMS in accordance with § 219.5 or three years after the effective date of this subpart, whichever comes first.

(c) *Initiation of plans, plan amendments, or plan revisions.* For the purposes of this section, initiation means that the Agency has provided notice under § 219.9(b) or issued a Notice of Intent or other public notice announcing the commencement of the process to develop a plan, plan amendment, or plan revision.

(d) *Plan development, plan amendments, or plan revisions initiated during the transition period.*

(1) Plan development and plan revisions initiated after the effective date of this subpart must conform to the requirements of this subpart, except that the plan for the Tongass National Forest

may be revised once under this subpart or the planning regulations in effect before November 9, 2000.

(2) Plan amendments initiated during the transition period may continue using the provisions of the planning regulations in effect before November 9, 2000 (See 36 CFR parts 200 to 299, Revised as of July 1, 2000) or may conform to the requirements of this subpart if the responsible official establishes an EMS in accordance with § 219.5.

(3) Plan amendments initiated after the transition period must conform to the requirements of this subpart.

(e) *Plan development, plan amendments, or plan revisions previously initiated.* Plan development, plan amendments, or plan revisions initiated before the transition period may continue to use the provisions of the planning regulations in effect before November 9, 2000 (See 36 CFR parts 200 to 299, Revised as of July 1, 2000), or may conform to the requirements of this subpart, in accordance with the following:

(1) The responsible official is not required to halt the process and start over. Rather, upon the unit's establishment of an EMS in accordance with § 219.5, the responsible official may apply this subpart as appropriate to complete the plan development, plan amendment, or plan revision process.

(2) The responsible official may elect to use either the administrative appeal and review procedures at 36 CFR part 217 in effect prior to November 9, 2000, (See 36 CFR parts 200 to 299, Revised as of July 1, 2000), or the objection procedures of this subpart, except when a plan amendment is approved contemporaneously with a project or activity and applies only to the project or activity, in which case 36 CFR part 215 or part 218, subpart A, apply.

(f) *Management indicator species.* For units with plans developed, amended, or revised using the provisions of the planning rule in effect prior to November 9, 2000, the responsible official may comply with any obligations relating to management indicator species by considering data and analysis relating to habitat unless the plan specifically requires population monitoring or population surveys for the species. Site-specific monitoring or surveying of a proposed project or activity area is not required, but may be conducted at the discretion of the responsible official.

§ 219.15 Severability.

In the event that any specific provision of this rule is deemed by a court to be invalid, the remaining provisions shall remain in effect.

§ 219.16 Definitions.

Definitions of the special terms used in this subpart are set out in alphabetical order.

Adaptive management: An approach to natural resource management where actions are designed and executed and effects are monitored for the purpose of learning and adjusting future management actions, which improves the efficiency and responsiveness of management.

Area of analysis: The geographic area within which ecosystems, their components, or their processes are evaluated during analysis and development of one or more plans, plan revisions, or plan amendments. This area may vary in size depending on the relevant planning issue. For a plan, an area of analysis may be larger than a plan area. For development of a plan amendment, an area of analysis may be smaller than the plan area. An area of analysis may include multiple ownerships.

Diversity of plant and animal communities: The distribution and relative abundance or extent of plant and animal communities and their component species, including tree species, occurring within an area.

Ecological conditions: Components of the biological and physical environment that can affect diversity of plant and animal communities and the productive capacity of ecological systems. These components could include the abundance and distribution of aquatic and terrestrial habitats, roads and other structural developments, human uses, and invasive, exotic species.

Ecosystem diversity: The variety and relative extent of ecosystem types, including their composition, structure, and processes within all or a part of an area of analysis.

Environmental management system: The part of the overall management system that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining the environmental policy of the planning unit.

Federally recognized Indian Tribe: An Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Forest land: Land at least 10 percent occupied by forest trees of any size or formerly having had such tree cover and not currently developed for nonforest uses. Lands developed for nonforest use include areas for crops; improved pasture; residential or administrative areas; improved roads of any width and adjoining road clearing; and power line clearings of any width.

ISO 14001: A consensus standard developed by the International Organization for Standardization and adopted by the American National Standards Institute that describes environmental management systems and outlines the elements of an environmental management system.

Newspaper(s) of record: The principal newspapers of general circulation annually identified and published in the **Federal Register** by each Regional Forester to be used for publishing notices as required by 36 CFR 215.5. The newspaper(s) of record for projects in a plan area is (are) the newspaper(s) of record for notices related to planning.

Plan: A document or set of documents that integrates and displays information relevant to management of a unit of the National Forest System.

Plan area: The National Forest System lands covered by a plan.

Productivity: The capacity of National Forest System lands and their ecological systems to provide the various renewable resources in certain amounts in perpetuity. For the purposes of this subpart it is an ecological, not an economic, term.

Public participation: Activities that include a wide range of public involvement tools and processes, such as collaboration, public meetings, open houses, workshops, and comment periods.

Responsible Official: The official with the authority and responsibility to oversee the planning process and to approve plans, plan amendments, and plan revisions.

Reviewing Officer: The supervisor of the responsible official. The reviewing officer responds to objections made to a plan, plan amendment, or plan revision prior to approval.

Species: Any member of the currently accepted and scientifically defined plant or animal kingdoms of organisms.

Species-of-concern: Species for which the responsible official determines that management actions may be necessary to prevent listing under the Endangered Species Act.

Species-of-interest: Species for which the responsible official determines that management actions may be necessary or desirable to achieve ecological or other multiple use objectives.

Timber production: The purposeful growing, tending, harvesting, and

regeneration of regulated crops of trees to be cut into logs, bolts, or other round sections for industrial or consumer use.

Visitor opportunities: The spectrum of settings, landscapes, scenery, facilities, services, access points, information, learning-based recreation, wildlife, natural features, cultural and heritage sites, and so forth available for National Forest System visitors to use and enjoy.

Wilderness: Any area of land designated by Congress as part of the National Wilderness Preservation System that was established in the Wilderness Act of 1964 (16 U.S.C. 1131–1136).

Dated: August 13, 2007.

Sally Collins,

Associate Chief.

[FR Doc. E7–16378 Filed 8–22–07; 8:45 am]

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Part VII

The President

Proclamation 8166—National Prostate Cancer Awareness Month, 2007

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Presidential Documents

Title 3—

The President

Proclamation 8166 of August 21, 2007

National Prostate Cancer Awareness Month, 2007

By the President of the United States of America

A Proclamation

During National Prostate Cancer Awareness Month, we underscore our commitment to winning the battle against prostate cancer and raising awareness of the risk factors, prevention, and treatment of this disease.

All men can develop prostate cancer, yet studies have shown that risk increases with age. Although the exact cause of the disease is not yet known, factors that may affect the likelihood of developing prostate cancer include race, diet, general health, and family history. Because the chances of surviving prostate cancer may be higher when it is diagnosed and treated in its early stages, men should speak with their doctors about their risk and screening options.

America leads the world in medical research, and we are committed to continuing our progress in the search for a cure for prostate cancer. Through work at the National Institutes of Health, National Cancer Institute, Centers for Disease Control and Prevention, and the Department of Defense, we are exploring the genetic, biochemical, environmental, and lifestyle factors that increase prostate cancer risk and lead to its development and progression. These and other efforts are helping improve our knowledge of the causes of this disease.

As we observe National Prostate Cancer Awareness Month, we recognize the strength and courage of the men battling prostate cancer and of those who love and support them. We also pay tribute to the medical professionals, the researchers, and all those whose tireless efforts are making a positive difference in the lives of those living with prostate cancer. All Americans can raise awareness and help fight this disease by talking with their friends and families about the risk of prostate cancer and the ways to prevent, detect, and treat it.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 2007 as National Prostate Cancer Awareness Month. I call upon government officials, businesses, communities, health care professionals, educators, and the people of the United States to reaffirm our Nation's strong and ongoing commitment to the fight against prostate cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of August, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 07–4163
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Intelligence Reform and Terrorism Prevention Act of 2004; implementation:

Travel with Western Hemisphere; documents required for persons departing from or arriving in United States at sea and land ports-of-entry; comments due by 8-27-07; published 6-26-07 [FR 07-03104]

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TREASURY DEPARTMENT

U.S.-Jordan Free Trade Agreement:

Preferential tariff treatment, other provisions, and comment request; comments due by 8-27-07; published 6-27-07 [FR 07-03133]

U.S. - Morocco Free Trade Agreement; comments due by 8-28-07; published 6-29-07 [FR 07-03153]

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Mutual holding company structures; optional charter provisions; comments due by 8-27-07; published 6-27-07 [FR E7-12172]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 2863/P.L. 110–75

To authorize the Coquille Indian Tribe of the State of Oregon to convey land and interests in land owned by the Tribe. (Aug. 13, 2007; 121 Stat. 724)

H.R. 2952/P.L. 110–76

To authorize the Saginaw Chippewa Tribe of Indians of the State of Michigan to convey land and interests in lands owned by the Tribe. (Aug. 13, 2007; 121 Stat. 725)

H.R. 3006/P.L. 110–77

To improve the use of a grant of a parcel of land to the State of Idaho for use as an agricultural college, and for other purposes. (Aug. 13, 2007; 121 Stat. 726)

S. 375/P.L. 110–78

To waive application of the Indian Self-Determination and Education Assistance Act to a specific parcel of real property transferred by the United States to 2 Indian tribes in the State of Oregon, and for other purposes. (Aug. 13, 2007; 121 Stat. 727)

S. 975/P.L. 110–79

Granting the consent and approval of the Congress to an interstate forest fire protection compact. (Aug. 13, 2007; 121 Stat. 730)

S. 1716/P.L. 110–80

To amend the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, to strike a requirement relating to forage producers. (Aug. 13, 2007; 121 Stat. 734)

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CORRECTION

In the last **List of Public Laws** printed in the *Federal Register* on August 13, 2007, H.R. 2025, Public Law 110-65, and H.R. 2078, Public Law 110-67, were printed incorrectly. They should read as follows:

H.R. 2025/P.L. 110–65

To designate the facility of the United States Postal Service located at 11033 South State Street in Chicago, Illinois, as the "Willye B. White Post Office Building". (Aug. 9, 2007; 121 Stat. 568)

H.R. 2078/P.L. 110–67

To designate the facility of the United States Postal Service located at 14536 State Route 136 in Cherry Fork, Ohio, as the "Staff Sergeant Omer T. 'O.T.' Hawkins Post Office". (Aug. 9, 2007; 121 Stat. 570)

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