



# Federal Register

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Tuesday

June 24, 2008

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**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

**WHEN:** Tuesday, July 8, 2008  
9:00 a.m.–Noon

**WHERE:** Office of the Federal Register  
Conference Room, Suite 700  
800 North Capitol Street, NW.  
Washington, DC 20002

**RESERVATIONS:** (202) 741-6008



# Contents

Federal Register

Vol. 73, No. 122

Tuesday, June 24, 2008

## Agency for Healthcare Research and Quality

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35692–35693

## Agriculture Department

*See* Farm Service Agency

*See* Forest Service

*See* Natural Resources Conservation Service

## Arctic Research Commission

### NOTICES

Meetings, 35634

## Army Department

*See* Engineers Corps

### NOTICES

Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Stove Apparatus; Availability, 35670–35671

## Census Bureau

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35636–35637

## Centers for Disease Control and Prevention

### NOTICES

Meetings:

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 35693

## Children and Families Administration

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35693–35694

## Coast Guard

### RULES

Regulated Navigation Area:

Chesapeake and Delaware Canal, Chesapeake City Anchorage Basin, MD, 35588–35590

## Commerce Department

*See* Census Bureau

*See* International Trade Administration

*See* National Oceanic and Atmospheric Administration

*See* Patent and Trademark Office

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35634–35636

## Comptroller of the Currency

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35722–35723

## Defense Department

*See* Army Department

*See* Engineers Corps

*See* Navy Department

### NOTICES

36(b)(1) Arms Sales Notification, 35665–35668

Base Closure and Realignment, 35669

Higher Initial Maximum Uniform Allowance Rate; Uniform Allowance, 35669

Privacy Act; Systems of Records, 35669–35670

## Education Department

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35672–35673

Applications for New Awards for Fiscal Year (FY 2008): Personnel Development to Improve Services and Results for Children With Disabilities, etc., 35673–35679

Meetings:

National Advisory Council on Indian Education, 35679–35680

## Energy Department

*See* Federal Energy Regulatory Commission

### NOTICES

Bright Tomorrow Lighting Competition; (L Prize), 35680

## Engineers Corps

### NOTICES

Ecosystem Restoration Feasibility Study:

Spring Bayou, Louisiana, 35671

Intent to Prepare a Draft Environmental Impact Statement;

Clear Creek General Reevaluation Study:

Brazoria, Fort Bend, Galveston and Harris Counties, TX., 35671–35672

## Environmental Protection Agency

### RULES

Control of Emissions from new and In-use nonroad compression-ignition engines; CFR correction, 35591

Standards of Performance for Petroleum Refineries, 35838–35881

### NOTICES

Determination:

Massachusetts Marine Sanitation Device Standard, 35684–35686

Draft Toxicological Review of Carbon Tetrachloride:

In Support of the Summary Information in the Integrated

Risk Information System (IRIS), 35686–35687

Scientific Peer Review Teleconference:

Draft Human and Ecological Risk Assessment of Coal

Combustion Wastes, 35687

## Farm Credit Administration

### NOTICES

Meetings; Sunshine Act, 35687–35688

## Farm Service Agency

### NOTICES

Meetings:

Advisory Committee on Beginning Farmers and Ranchers, 35632

## Federal Aviation Administration

### PROPOSED RULES

Airworthiness Directives:

Airbus Model A318, A319, A320, and A321 Series

Airplanes, 35601–35603

Airbus Model A330-200, A330-300, and A340 300 Series Airplanes, 35595–35596, 35603–35606  
 Boeing Model 737 300, 400, and 500 Series Airplanes, 35598–35601  
 Boeing Model 737 600, 700, and 800 Series Airplanes, 35593–35594  
 Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 190 Airplanes, 35597–35598

#### **Federal Deposit Insurance Corporation**

##### **NOTICES**

Meetings:

Advisory Committee on Economic Inclusion, 35688

#### **Federal Energy Regulatory Commission**

##### **NOTICES**

Combined Notice of Filings, 35680–35684

#### **Federal Mine Safety and Health Review Commission**

##### **NOTICES**

Meetings; Sunshine Act, 35714

#### **Federal Reserve System**

##### **NOTICES**

Meetings; Sunshine Act, 35688–35689

#### **Federal Trade Commission**

##### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35689–35690

#### **Fish and Wildlife Service**

##### **RULES**

Subsistence Taking of Wildlife Regulations:  
 Subsistence Management Regulations for Public Lands in Alaska (2008-09 and 2009-10), 35726–35776

##### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35703–35706  
 Draft comprehensive conservation plan and environmental assessment; availability:  
 Pathfinder National Wildlife Refuge, Alcova, WY; Correction, 35706  
 Marine Mammals and Endangered Species:  
 National Marine Fisheries Service File (No. 10074); U.S. Fish and Wildlife Service File (No. PRT-165304), 35661  
 Receipt of Applications for Permit, 35706–35708

#### **Food and Drug Administration**

##### **RULES**

Oral Dosage Form New Animal Drugs; Sulfachlorpyridazine Powder, 35579

##### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35694–35700

#### **Forest Service**

##### **RULES**

Subsistence Taking of Wildlife Regulations:  
 Subsistence Management Regulations for Public Lands in Alaska (2008-09 and 2009-10), 35726–35776

##### **NOTICES**

Revision of Land Management Plan for the George Washington National Forest, Virginia and West Virginia, 35632–35633

#### **General Services Administration**

##### **PROPOSED RULES**

General Services Acquisition Regulation:  
 GSAR Case 2008-G512; Rewrite of GSAR Part 542;  
 Contract Administration and Audit Services, 35614–35615  
 Rewrite of Part 543; Contract Modifications, 35615–35617  
**NOTICES**  
 Privacy Act; Systems of Records, 35690–35692

#### **Health and Human Services Department**

*See* Agency for Healthcare Research and Quality  
*See* Centers for Disease Control and Prevention  
*See* Children and Families Administration  
*See* Food and Drug Administration  
*See* National Institutes of Health

#### **Homeland Security Department**

*See* Coast Guard

#### **Indian Affairs Bureau**

##### **RULES**

Gaming on Trust Lands Acquired After October 17, 1988; Correction, 35579–35580

#### **Interior Department**

*See* Fish and Wildlife Service  
*See* Indian Affairs Bureau  
*See* Land Management Bureau  
*See* National Park Service  
*See* Surface Mining Reclamation and Enforcement Office

#### **Internal Revenue Service**

##### **RULES**

Guidance for Determining the Basis of Property Acquired in Certain Nonrecognition Transactions, 35580–35583  
 Guidance Under Section 664 Regarding the Effect of Unrelated Business Taxable Income on Charitable Remainder Trusts, 35583–35585

##### **PROPOSED RULES**

Guidance for Determining the Basis of Property Acquired in Certain Nonrecognition Transactions, 35606–35607

#### **International Trade Administration**

##### **NOTICES**

Export Trade Certificate of Review, 35637–35639  
 Extension of Time Limit for the Final Results, etc.:  
 Stainless Steel Bar from India, 35639  
 Final Affirmative Countervailing Duty Determination and Final Affirmative Determination:  
 Laminated Woven Sacks From the People's Republic of China, 35639–35642  
 Final Affirmative Countervailing Duty Investigation Determination:  
 Light-Walled Rectangular Pipe and Tube From People's Republic of China, 35642–35645  
 Final Determination of Sales at Less Than Fair Value, etc.:  
 Laminated Woven Sacks from the People's Republic of China, 35646–35649  
 Light-Walled Rectangular Pipe and Tube from Mexico, 35649–35652  
 Light-Walled Rectangular Pipe and Tube from the Republic of Korea, 35652–35657  
 Partial Rescission of Antidumping Duty Administrative Review:  
 Stainless Steel Bar from India, 35657–35658

Postponement of Preliminary Determination in the Antidumping Duty Investigation: Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China, 35658

#### **International Trade Commission**

##### **NOTICES**

Investigations:  
Certain Foam Footwear, 35710–35711

#### **Justice Department**

See Justice Programs Office

##### **NOTICES**

Consent Decree:  
Centex Homes, a Nevada General Partnership, 35711  
KB Home, 35711–35712  
M.D.C. Holdings, Inc., et al., 35712  
Pulte Homes, Inc., 35712

#### **Justice Programs Office**

##### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35712–35714

#### **Land Management Bureau**

##### **RULES**

Oil and Gas Leasing; Geothermal Resources Leasing; Coal Management; Management of Solid Minerals Other Than Coal; Mineral Materials Disposal; and Mining Claims, 35591–35592

##### **PROPOSED RULES**

Leasing of Solid Minerals Other than Coal and Oil Shale, 35609–35614

##### **NOTICES**

Meetings:  
Central California Resource Advisory Council Off-Highway Vehicle Subcommittee, 35708  
Public Land Order No. 7710; Extension of Public Land Order No. 3708;  
Modified by Public Land Order No. 6709; Alaska, 35708

#### **Mine Safety and Health Federal Review Commission**

See Federal Mine Safety and Health Review Commission

#### **National Highway Traffic Safety Administration**

##### **PROPOSED RULES**

Petition for Approval of Alternate Odometer Disclosure Requirements, 35617–35623

#### **National Institutes of Health**

##### **NOTICES**

Government-Owned Inventions; Availability for Licensing, 35700–35701

##### Meetings:

Center For Scientific Review, 35701–35702  
National Institute of Mental Health, 35702–35703  
National Institute on Aging, 35702

#### **National Oceanic and Atmospheric Administration**

##### **RULES**

Atlantic Highly Migratory Species (HMS); Atlantic Shark Management Measures, 35778–35833

##### **PROPOSED RULES**

Taking of Marine Mammals Incidental to Commercial Fishing Operations:  
Atlantic Pelagic Longline Take Reduction Plan, 35623–35631

##### **NOTICES**

Atlantic Highly Migratory Species (HMS); Atlantic Shark Management Measures; Research Fishery, 35834–35835  
Endangered and Threatened Species; Take of Anadromous Fish, 35658–35659

Fisheries of the Exclusive Economic Zone Off Alaska: Prohibited Species Donation Program, 35659–35661  
Marine Mammals and Endangered Species:  
National Marine Fisheries Service File (No. 10074); U.S. Fish and Wildlife Service File (No. PRT-165304), 35661

#### **National Park Service**

##### **NOTICES**

Intent to Prepare an Environmental Assessment and Scoping, 35708–35709  
Inventory Completion:  
Slater Museum of Natural History, University of Puget Sound, Tacoma, WA, 35709–35710  
University of Hawaii at Hilo, Department of Anthropology, Hilo, HI, 35710

#### **Natural Resources Conservation Service**

##### **NOTICES**

Finding of No Significant Impact:  
TE-34 Penchant Basin Natural Resources Plan, Terrebonne Parish, LA, 35633–35634

#### **Navy Department**

##### **RULES**

Certifications and Exemptions under the International Regulations for Preventing Collisions at Sea (1972), 35585–35588

#### **Nuclear Regulatory Commission**

##### **NOTICES**

Establishment of Atomic Safety and Licensing Board, 35714–35715  
Meetings; Sunshine Act, 35715

#### **Patent and Trademark Office**

##### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35661–35665

#### **Securities and Exchange Commission**

##### **NOTICES**

Meetings:  
Advisory Committee on Improvements to Financial Reporting, 35715–35716  
Self-Regulatory Organizations; Proposed Rule Changes:  
The NASDAQ Stock Market LLC, 35716–35718

#### **Surface Mining Reclamation and Enforcement Office**

##### **PROPOSED RULES**

Utah Regulatory Program, 35607–35609

#### **Surface Transportation Board**

##### **NOTICES**

Union Pacific Railroad Company—Abandonment Exemption-in Saline County, MO, 35721–35722

#### **Tennessee Valley Authority**

##### **NOTICES**

Final Environmental Impact Statement:  
Rutherford-Williamson-Davidson Power Supply Improvement Project, 35718–35721

**Thrift Supervision Office****NOTICES**

Meetings; Sunshine Act, 35723

**Transportation Department**

*See* Federal Aviation Administration

*See* National Highway Traffic Safety Administration

*See* Surface Transportation Board

**Treasury Department**

*See* Comptroller of the Currency

*See* Internal Revenue Service

*See* Thrift Supervision Office

**Veterans Affairs Department****NOTICES**

Meetings:

Health Services Research and Development Service Merit  
Review Board, 35723

Summary of a Precedent Opinion of the General Counsel,  
35724

---

**Separate Parts In This Issue****Part II**

Agriculture Department, Forest Service; Interior

Department, Fish and Wildlife Service, 35726–35776

**Part III**

Commerce Department, National Oceanic and Atmospheric

Administration, 35778–35835

**Part IV**

Environmental Protection Agency, 35838–35881

---

**Reader Aids**

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to <http://listserv.access.gpo.gov> and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

**CFR PARTS AFFECTED IN THIS ISSUE**

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**14 CFR****Proposed Rules:**

39 (6 documents) .....35593,  
35595, 35597, 35598, 35601,  
35603

**21 CFR**

520 .....35579

**25 CFR**

292 .....35579

**26 CFR**

1 (2 documents) .....35580,  
35583

602 .....35583

**Proposed Rules:**

1 .....35606

**30 CFR****Proposed Rules:**

944 .....35607

**32 CFR**

706 (2 documents) .....35585,  
35587

**33 CFR**

165 .....35588

**36 CFR**

242 .....35726

**40 CFR**

60 .....35838

89 .....35591

**43 CFR**

3000 .....35591

3100 .....35591

3150 .....35591

3200 .....35591

3500 .....35591

3580 .....35591

3600 .....35591

3730 .....35591

3810 .....35591

3830 .....35591

**Proposed Rules:**

3500 .....35609

**48 CFR****Proposed Rules:**

542 .....35614

543 .....35615

552 (2 documents) .....35614,  
35615

**49 CFR****Proposed Rules:**

580 .....35617

**50 CFR**

100 .....35726

600 .....35778

635 .....35778

**Proposed Rules:**

229 .....35623

# Rules and Regulations

Federal Register

Vol. 73, No. 122

Tuesday, June 24, 2008

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 HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 520

#### Oral Dosage Form New Animal Drugs; Sulfachlorpyridazine Powder

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health, A Division of Wyeth Holdings Corp. The supplemental NADA provides for a revised food safety warning statement for oral use of sulfachlorpyridazine in the milk or milk replacer of ruminating calves.

**DATES:** This rule is effective June 24, 2008.

**FOR FURTHER INFORMATION CONTACT:** Cindy L. Burnsteel, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-276-8341, e-mail: [cindy.burnsteel@fda.hhs.gov](mailto:cindy.burnsteel@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Fort Dodge Animal Health, A Division of Wyeth Holdings Corp., P.O. Box 1339, Fort Dodge, IA 50501, filed a supplement to NADA 33-373 for VETISULID (sulfachlorpyridazine sodium) Powder, approved for oral use in calves and swine for the treatment of diarrhea caused or complicated by *Escherichia coli* (colibacillosis). The supplemental NADA provides for a revised food safety warning statement for oral use of sulfachlorpyridazine in the milk or milk replacer of ruminating calves. The supplemental application is

approved as of May 19, 2008, and the regulations are amended in 21 CFR 520.2200b to reflect the approval and a current format.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

#### List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

#### PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 2. Revise § 520.2200b to read as follows:

#### § 520.2200b Sulfachlorpyridazine powder.

(a) *Specifications.* Sodium sulfachlorpyridazine powder.

(b) *Sponsor.* See No. 053501 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.630 of this chapter.

(d) *Conditions of use.* It is used as follows:

(i) *Calves*—(i) *Amount.* Administer 30 to 45 milligrams per pound (mg/lb) body weight per day in milk or milk replacer for 1 to 5 days in 2 divided doses twice daily.

(ii) *Indications for use.* For the treatment of diarrhea caused or complicated by *E. coli* (colibacillosis).

(iii) *Limitations.* Treated, ruminating calves must not be slaughtered for food during treatment or for 7 days after the

last treatment. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

(2) *Swine*—(i) *Amount.* Administer 20 to 35 mg/lb body weight per day for 1 to 5 days in 2 divided doses twice daily:

(A) In drinking water; or

(B) For individual treatment, in an oral suspension containing approximately 42 mg sulfachlorpyridazine per milliliter in divided doses twice daily.

(ii) *Indications for use.* For the treatment of diarrhea caused or complicated by *E. coli* (colibacillosis).

(iii) *Limitations.* Treated swine must not be slaughtered for food during treatment or for 4 days after the last treatment.

Dated: June 9, 2008.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

[FR Doc. E8-14291 Filed 6-23-08; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 292

RIN 1076-AE81

#### Gaming on Trust Lands Acquired After October 17, 1988; Correction

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule; correction and stay of effective date.

**SUMMARY:** This document contains a correction to a final rule that was published May 20, 2008 (73 FR 29354). The regulation relates to gaming on trust lands acquired after October 17, 1988.

**DATES:** The effective date of this correction is June 24, 2008. In rule FR Document E8-11086 published on May 20, 2008 (73 FR 29353), the effective date of the rule is stayed until August 25, 2008.

**FOR FURTHER INFORMATION CONTACT:** Paula Hart, Acting Director, Office of Indian Gaming, (202) 219-4066.

**SUPPLEMENTARY INFORMATION:** The Bureau of Indian Affairs published on May 20, 2008, a final rule relating to gaming on trust lands acquired after October 17, 1988. The preamble to this



rule contained an incorrect effective date, contained an error in the Small Business Regulatory Enforcement and Fairness Act statement in the **SUPPLEMENTARY INFORMATION** section, and omitted a sentence.

In rule FR Document E8-11086 published on May 20, 2008 (73 FR 29353), make the following corrections:

1. On page 29354, in the first column, the effective date is listed as June 19, 2008. This is stayed until August 25, 2008.

2. On page 29358, in the second column, under the heading "Section 292.3 When can a tribe conduct gaming activities on trust lands?" a sentence was omitted after the sentence that ends, "concerns whether a specific area of land is a reservation." A new sentence should be added in this location to read, "Regardless of where the tribe sends its request for an Indian lands opinion, the Department will coordinate the completion of the request by the appropriate offices."

3. On page 29374, in the third column, under the heading "Small Business Regulatory Enforcement and Fairness Act (SBREFA)," the first sentence reads, "This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement and Fairness Act." This sentence should be corrected to read, "This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement and Fairness Act." In this same location, paragraph (a) incorrectly states that this rule, "Does not have an annual effect on the economy of \$100 million or more." This should be corrected to read, "Has an annual effect on the economy of \$100 million or more."

Dated: June 19, 2008.

**George Skibine,**

*Acting Deputy Assistant Secretary for Policy and Economic Development—Indian Affairs.*  
[FR Doc. E8-14211 Filed 6-23-08; 8:45 am]

**BILLING CODE 4310-4N-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9402]

RIN 1545-BH58

#### **Guidance Under Section 956 for Determining the Basis of Property Acquired in Certain Nonrecognition Transactions**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations under section 956 of the Internal Revenue Code (Code) regarding the determination of basis in certain United States property (within the meaning of section 956(c) of the Code) acquired by a controlled foreign corporation in certain nonrecognition transactions that are intended to repatriate earnings and profits of the controlled foreign corporation without United States income taxation. The final regulation adds a cross reference to the temporary regulations. These regulations affect United States shareholders of a controlled foreign corporation that acquires United States property in certain nonrecognition transactions. The text of the temporary regulations serves as the text of the proposed regulations (REG-102122-08) set forth in the notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective on June 24, 2008.

*Applicability Date:* These regulations apply to property acquired in exchanges occurring on or after June 24, 2008.

**FOR FURTHER INFORMATION CONTACT:** John H. Seibert at (202) 622-3860 (not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

This document contains amendments to 26 CFR part 1 under section 956, which was added to the Code by the Revenue Act of 1962, Public Law 87-834 (76 Stat. 960 (1962)). The temporary regulations in this document are issued under the authority of sections 367(b) and 956(e). Section 367(b) was added to the Code by section 1042(a) of the Tax Reform Act of 1976, Public Law 94-455 (90 Stat. 1520 (1976)). Section 956(e) was added to the Code by section 13232(b) of the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, (107 Stat 312 (1993)).

The temporary regulations in this document apply to determine the basis of certain United States property (as defined in section 956(c) of the Code) acquired by a controlled foreign corporation in certain nonrecognition transactions that are intended to repatriate earnings and profits of the controlled foreign corporation without an income inclusion by the United States shareholders of the controlled foreign corporation under section 951(a)(1)(B).

#### **Explanation of Provisions**

##### *A. Transactions at Issue*

The IRS and the Treasury Department are aware that certain taxpayers are engaging in certain nonrecognition transactions in which a controlled foreign corporation (CFC) acquires certain United States property (within the meaning of section 956(c)) without resulting in an income inclusion to the United States shareholders of the CFC under section 951(a)(1)(B).

In one such transaction, for example, USP, a domestic corporation and the common parent of an affiliated group that files a consolidated tax return, owns 100-percent of the outstanding stock of US1 and US2, both domestic corporations that join USP in the filing of a consolidated tax return. US1 owns 100 percent of the stock of CFC, a controlled foreign corporation. US2 issues \$100x of its stock to CFC in exchange for \$10x of CFC stock and \$90x cash.

USP takes the position that: (i) US2's transfer of its stock to CFC in exchange for \$10x of CFC stock and \$90x cash is an exchange to which section 351 applies; (ii) US2 recognizes no gain on the receipt of \$10x of CFC stock and \$90x cash in exchange for its stock pursuant to section 1032(a); (iii) CFC recognizes no gain on the issuance of its stock to US2 under section 1032(a); (iv) CFC's basis in the US2 stock is zero pursuant to section 362(a); and (v) US1 and US2 do not and will not have an income inclusion under section 951(a)(1)(B) as a result of CFC holding the US2 stock (which constitutes United States property under section 956(c)).

The IRS and the Treasury Department believe these transactions raise significant policy concerns because the transactions may have the effect of repatriating earnings and profits of a CFC without a corresponding dividend inclusion, or an income inclusion under section 951(a)(1)(B) by reason of the CFC's investment in United States property.

##### *B. Section 956—In General*

Section 956 was enacted to require an income inclusion by United States shareholders of a CFC that invests certain earnings and profits in United States property "on the grounds that [the investment] is substantially the equivalent of a dividend being paid to them." S. Rep. No. 87-1881, 1962-3 CB 703, 794 (1962). (See § 601.601(d)(2)(ii)(b)).

Under Section 951(a)(1)(B) each United States shareholder (as defined in section 951(b)) of a CFC (as defined in section 957(a)) must include in its gross

income for its taxable year in which or with which the taxable year of the CFC ends, the amount determined under section 956 with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(2)).

The amount determined under section 956 with respect to a United States shareholder of a CFC for any taxable year is the lesser of: (1) The excess, if any, of the shareholder's pro rata share of the average amounts of United States property held (directly or indirectly) by the CFC as of the close of each quarter of such taxable year, over the amount of earnings and profits of the CFC described in section 959(c)(1)(A) with respect to such shareholder; or (2) the shareholder's pro rata share of the applicable earnings of the CFC. In general, the amount taken into account with respect to any United States property for this purpose is the adjusted basis of such property as determined for purposes of computing earnings and profits, reduced by any liability to which the property is subject. Earnings and profits described in section 959(c)(1)(A) are attributable to amounts previously included in gross income by the United States shareholder under section 951(a)(1)(B) (or which would have been included except for section 959(a)(2)).

Section 956(c)(1) defines United States property to generally include stock of a domestic corporation and an obligation of a United States person. However, section 956(c)(2) excludes from the definition of United States property, the stock or obligations of a domestic corporation which is neither a United States shareholder of the CFC, nor a domestic corporation 25 percent or more of the total combined voting power of which, immediately after the CFC's acquisition of stock in such domestic corporation, is owned (or is considered as being owned) by the United States shareholders of the CFC in the aggregate.

Section 956(e) grants the Secretary authority to prescribe such regulations as may be necessary to carry out the purposes of section 956, including regulations to prevent the avoidance of section 956 through reorganizations or otherwise.

#### C. Section 367(b)—In General

Section 367(b)(1) provides that in the case of any exchange described in section 332, 351, 354, 355, 356 or 361, in connection with which there is no transfer of property described in section 367(a)(1), a foreign corporation shall be considered to be a corporation except to the extent provided in regulations

prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes.

Section 367(b)(2) provides that the regulations prescribed pursuant to section 367(b)(1) shall include (but shall not be limited to) regulations dealing with the sale or exchange of stock or securities in a foreign corporation by a United States person, including regulations providing the circumstances under which gain is recognized, amounts are included in gross income as a dividend, adjustments are made to earnings and profits, or adjustments are made to basis of stock or securities, and basis of assets.

Section 367(b) was enacted to ensure that international tax considerations are adequately addressed when the provisions of subchapter C of the Code apply to certain nonrecognition exchanges involving foreign corporations. In adopting section 367(b), Congress noted that "it is essential to protect against tax avoidance \* \* \* upon the repatriation of previously untaxed foreign earnings." H.R. Rep. No. 658, 94th Cong., 1st Sess. 241 (1975).

#### D. Determination of Basis in Certain Nonrecognition Exchanges

Section 358(a)(1) generally provides that the basis of property received pursuant to an exchange to which section 351, 354, 355, 356, or 361 applies is the same as that of the property exchanged, decreased by the fair market value of any other property (except money) received by the taxpayer, the amount of any money received by the taxpayer, and the amount of loss to the taxpayer which was recognized on such exchange, and increased by the amount which was treated as a dividend, and the amount of gain to the taxpayer which was recognized on such exchange (not including any portion of such gain which was treated as a dividend).

Section 362(a) provides that if property is acquired by a corporation in connection with a transaction to which section 351 applies, or as paid-in surplus or as a contribution to capital, then the basis of such property shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer.

Section 1032(a) provides that no gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation.

#### E. Determination of Basis for Purposes of Section 956

These temporary regulations apply when a CFC acquires stock or obligations of a domestic issuing corporation, that constitute United States property under section 956(c), from such corporation pursuant to an exchange in which the controlled foreign corporation's basis in such property is determined under section 362(a). If these temporary regulations apply to such an exchange, then, solely for purposes of section 956, the CFC's basis in such United States property shall be no less than the fair market value of the property transferred by the controlled foreign corporation in exchange for such property. For purposes of the temporary regulations, the term property has the meaning set forth in section 317(a), but includes any liability assumed by the CFC in connection with the exchange notwithstanding section 357(a).

These temporary regulations also apply if United States property, the basis of which is determined under these temporary regulations, is transferred to a related person (related person transferee), or by a related person transferee to another related person, pursuant to an exchange in which the related person transferee's basis in such property is determined, in whole or in part, by reference to the transferor's basis in such property. This rule is intended to prevent taxpayers from attempting to avoid the general rule of the temporary regulations by subsequently transferring the United States property to a related person in another nonrecognition transaction.

The basis of United States property determined under the temporary regulations shall apply only for purposes of determining the amount of United States property acquired or held by a CFC under section 956, and accordingly the amount of a United States shareholder's income inclusion under section 951(a)(1)(B) with respect to such CFC.

The temporary regulations apply only to determine the basis of United States property acquired by a CFC pursuant to an exchange that is within the scope of these temporary regulations. All other basis determinations are made under the rules provided under section 956(a) and § 1.956-1(e)(1)(4).

#### Effective/Applicability Dates

These regulations apply to United States property acquired in exchanges occurring on or after June 24, 2008. No inference is intended as to the basis of United States property acquired by a

controlled foreign corporation pursuant to a transaction described herein under current law, and the IRS may, where appropriate, challenge such transactions under applicable provisions or judicial doctrines.

### Special Analyses

These temporary and final regulations are necessary to prevent abusive transactions of the type described in the explanation of provisions in this preamble. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b) of the Administrative Procedures Act and for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d)(1) and (3) of such Act. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small entities.

### Drafting Information

The principal author of these regulations is John H. Seibert, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.956-1 is amended by adding a sentence to the end of paragraph (e)(1) and adding new paragraphs (e)(5), (e)(6) and (f) to read as follows:

#### § 1.956-1 Shareholder's pro rata share of a controlled foreign corporation's increase in earnings invested in United States property.

\* \* \* \* \*

(e) \* \* \* (1) \* \* \* See § 1.956-1T(e)(6) for a special rule for determining amounts attributable to United States property acquired as the

result of certain nonrecognition transactions.

\* \* \* \* \*

(e)(5) and (e)(6) [Reserved]. For further guidance, see § 1.956-1T(e)(5) and (e)(6).

(f) *Effective/applicability dates.* (1) Paragraph (e)(5) of this section is effective June 14, 1988, with respect to investments made on or after June 14, 1988. Paragraph (e)(6) of this section applies to nonrecognition property acquired in exchanges occurring on or after June 24, 2008.

■ **Par. 3.** Section 1.956-1T is amended by:

■ 1. Redesignating paragraph (e)(5)(i) as paragraph (e)(5) and revising the paragraph heading for the newly-designated paragraph (e)(5).

■ 2. Adding paragraph (e)(6).

■ 3. Redesignating paragraph (e)(5)(ii) as paragraph (f) and revising newly-designated paragraph (f).

The revisions and additions read as follows:

#### § 1.956-1T Shareholder's pro rata share of a controlled foreign corporation's increase in earnings invested in United States property (temporary).

\* \* \* \* \*

(e)(5) *Exclusion for certain recourse obligations.* \* \* \*

(6) *Adjusted basis of property acquired in certain nonrecognition transactions—(i) Scope and purpose.* This paragraph (e)(6) provides rules for determining, solely for purposes of section 956, the basis of certain United States property acquired by a controlled foreign corporation pursuant to an exchange in which the controlled foreign corporation's basis in such United States property is determined under section 362(a). This paragraph (e)(6) also applies if United States property, the basis in which has been determined under these temporary regulations, is transferred (in one or more subsequent exchanges) to a related person (within the meaning of section 954(d)(3)), pursuant to an exchange in which the related person's basis in such property is determined, in whole or in part, by reference to the transferor's basis in such property. The purpose of this paragraph (e)(6) is to prevent the effective repatriation of earnings and profits of a controlled foreign corporation that acquires United States property in connection with an exchange to which this paragraph (e)(6) applies without a corresponding income inclusion under section 951(a)(1)(B) by claiming a basis in the United States property less than the amount of earnings and profits effectively repatriated.

(ii) *Definition of United States property.* For purposes of this paragraph (e)(6), *United States property* is stock of a domestic corporation described in section 956(c)(1)(B) or an obligation of a domestic corporation described in 956(c)(1)(C) that is acquired by a controlled foreign corporation from the domestic issuing corporation. The exceptions provided under section 956(c)(2) shall apply for this purpose.

(iii) *Basis of United States property.* Solely for purposes of section 956, the basis of United States property acquired by a controlled foreign corporation in connection with an exchange to which this paragraph (e)(6) applies shall be no less than the fair market value of the property transferred by the controlled foreign corporation in exchange for such United States property. For purposes of this paragraph (e)(6), the term *property* has the meaning set forth in section 317(a), but also includes any liability assumed by the controlled foreign corporation in connection with the exchange notwithstanding the application of section 357(a). The fair market value of the property transferred by the controlled foreign corporation in exchange for the United States property shall be determined at the time of the exchange.

(iv) *Timing.* For purposes of § 1.956-2(d)(1)(i)(a), a controlled foreign corporation that acquires United States property in an exchange to which this paragraph (e)(6) applies acquires an adjusted basis in such property at the time of the controlled foreign corporation's exchange of property for such United States property.

(v) *Transfers to related persons.* If a controlled foreign corporation transfers United States property, the basis in which has been determined under this paragraph (e)(6), to a related person (within the meaning of section 954(d)(3)) (related person transferee) in an exchange pursuant to which the related person transferee's basis in such United States property is determined, in whole or in part, by reference to the controlled foreign corporation's basis in such United States property, then, solely for purposes of section 956, the related person transferee's basis in such United States property shall be no less than the basis of such United States property in the hands of the controlled foreign corporation immediately before the exchange as determined under paragraph (e)(6)(iii) of this section. This paragraph (e)(6)(v) shall also apply in the case of one or more successive transfers of the United States property by a related person transferee to one or more persons related to the controlled foreign corporation (within the meaning

of section 954(d)(3)). This paragraph (e)(6)(v) shall apply regardless of whether a subsequent transfer was part of a plan (or series of related transactions) that includes the controlled foreign corporation's acquisition of the United States property.

(vi) *Examples.* The rules of this paragraph (e)(6) are illustrated by the following examples:

*Example 1.* (i) *Facts.* USP, a domestic corporation, is the common parent of an affiliated group that joins in the filing of a consolidated return. USP owns 100 percent of the stock of US1 and US2, both domestic corporations and members of the USP consolidated group. US1 owns 100 percent of the stock of CFC, a controlled foreign corporation. US2 issues \$100x of its stock to CFC in exchange for \$10x of CFC stock and \$90x cash. US2's transfer of its stock to CFC is described in section 351, US2 recognizes no gain in the exchange under section 1032(a), and CFC's basis in the US2 stock acquired in the exchange is determined under section 362(a).

(ii) *Analysis.* The US2 stock acquired by CFC in the exchange constitutes United States property under paragraph (e)(6)(ii) of this section because CFC acquires the US2 stock from US2, the issuing corporation. Therefore, because CFC's basis in the US2 stock is determined under section 362(a), then for purposes of section 956, CFC's basis in the US2 stock shall, under paragraph (e)(6)(iii) of this section, be no less than \$90x, the fair market value of the property exchanged by CFC for the US2 stock (the \$10x of CFC stock issued in the exchange does not constitute property for purposes of paragraph (e)(6)(iii) of this section). Pursuant to paragraph (e)(6)(iv) of this section, for purposes of § 1.956-2(d)(1)(i)(a) CFC shall be treated as acquiring its basis of no less than \$90x in the US2 stock at the time of its transfer of property to US2 in exchange for the US2 stock. The result would be the same if, instead of CFC transferring \$90x of cash to US2 in the exchange, CFC assumes a \$90x liability of US2.

*Example 2.* (i) *Facts.* USP, a domestic corporation owns 100 percent of the stock of USS, a domestic corporation. USP also owns 100 percent of the stock of CFC, a controlled foreign corporation. USP's basis in its USS stock equals the fair market value of the USS stock, or \$100x. USP transfers its USS stock to CFC in exchange for \$100x of CFC stock. USP's transfer of its USS stock to CFC is described in section 351, USP recognizes no gain in the exchange under section 351(a), and CFC's basis in the USS stock acquired in the exchange, determined under section 362(a), equals \$100x.

(ii) *Analysis.* The USS stock acquired by CFC in the exchange does not constitute United States property under paragraph (e)(6)(ii) of this section because CFC acquires the USS stock from USP. Therefore, CFC's basis in the US2 stock, for purposes of section 956, is not determined under this paragraph (e)(6). Instead, CFC's basis in the USS stock is determined under the general rule of section 956(a) and under § 1.956-

1(e)(1)-(4). As determined under section 362(a), CFC's basis in the USS stock is \$100x.

*Example 3.* (i) *Facts.* USP, a domestic corporation, owns 100 percent of the stock of CFC1, a controlled foreign corporation. CFC1 holds United States property (within the meaning of paragraph (e)(6)(ii) of this section) with a basis of \$30x for purposes of section 956 that was determined under paragraph (e)(6)(iii) of this section. CFC1 owns 100 percent of the stock of CFC2, a controlled foreign corporation. CFC1 transfers the United States property to CFC2 in an exchange described in section 351. CFC2's basis in the United States property is determined under section 362(a).

(ii) *Analysis.* In the section 351 exchange, CFC1 transferred United States property to CFC2 with a basis that was determined under paragraph (e)(6)(iii) of this section. Further, CFC2's basis in the United States property is determined under section 362(a) by reference, in whole or in part, to CFC's basis in such property. Therefore, for purposes of section 956, pursuant to paragraph (e)(6)(v) of this section CFC2's basis in the United States property shall be no less than \$30x. Paragraph (e)(6)(v) of this section would also apply if CFC2 subsequently transfers the United States property to another person related to CFC1 (within the meaning of section 954(d)(3)) if such related person's basis in the United States property is determined by reference, in whole or in part, to CFC2's basis in such property.

(f) *Effective/applicability date.* (1) Paragraph (e)(5) of this section is effective June 14, 1988, with respect to investments made on or after June 14, 1988. Paragraph (e)(6) of this section applies to nonrecognition property acquired in exchanges occurring on or after June 24, 2008.

(2) The applicability of paragraph (e)(6) of this section will expire on June 23, 2011.

**Steven T. Miller,**

*Acting Deputy Commissioner for Services and Enforcement.*

Approved: June 6, 2008.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 602

[TD 9403]

RIN 1545-BH02

#### Guidance Under Section 664 Regarding the Effect of Unrelated Business Taxable Income on Charitable Remainder Trusts

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations that provide guidance under Internal Revenue Code (Code) section 664 on the tax effect of unrelated business taxable income (UBTI) on charitable remainder trusts. The regulations reflect the changes made to section 664(c) by section 424(a) and (b) of the Tax Relief and Health Care Act of 2006. The regulations affect charitable remainder trusts that have UBTI in taxable years beginning after December 31, 2006.

**DATES:** *Effective Date:* The regulations are effective on June 24, 2008.

*Applicability Date:* For dates of applicability, see § 1.664-1(c)(3).

**FOR FURTHER INFORMATION CONTACT:** Cynthia Morton at (202) 622-3060 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2101. The collection of information in these final regulations is in § 1.664-1(c)(1). This information is required to enable a charitable remainder trust to report and pay the excise tax due on any UBTI of the trust.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection information displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax information are confidential, as required by 26 U.S.C. 6103.

## Background and Explanation of Provisions

This document contains amendments to 26 CFR part 1 under section 664 of the Code. On March 7, 2008, proposed regulations (REG-127391-07) relating to the tax effect of UBTI on charitable remainder trusts were published in the **Federal Register** (73 FR 12313).

Although two comments were received in response to the proposed regulations, no request to speak was submitted, so no public hearing was held (see 73 FR 18729). After consideration of the comments, the proposed regulations are adopted by this Treasury decision without substantive change.

For taxable years beginning before January 1, 2007, section 664(c) provided that a charitable remainder trust (whether a charitable remainder annuity trust or a charitable remainder unitrust) would not be exempt from income tax for any year in which the trust had any UBTI (within the meaning of section 512). Instead, such trust was taxed for each such year under subchapter J as though it were a nonexempt, complex trust. The final regulations reflect the changes to section 664(c) made by section 424 of the Tax Relief and Health Care Act of 2006 (Act), Public Law 109-432, 120 Stat. 2922. Section 424(a) of the Act, which applies to taxable years beginning after December 31, 2006, provides that charitable remainder trusts that have UBTI remain exempt from Federal income tax, but imposes a 100-percent excise tax on their UBTI.

The regulations confirm that, for purposes of determining the character of the distribution made to the beneficiary, the charitable remainder trust income that is UBTI is considered income of the trust. Specifically, income of the charitable remainder trust is allocated among the trust income categories in Treasury Regulation § 1.664-1(d)(1) without regard to whether any part of that income constitutes UBTI under section 512. The regulations also confirm that, consistent with § 1.664-1(d)(2), the excise tax imposed upon a charitable remainder trust with UBTI is treated as paid from corpus.

## Summary of Comments

### Comments Relating to Transitional Relief

The two commentators requested transitional relief to allow time for charitable remainder trusts with investments producing significant UBTI to restructure these investments. The commentators noted that the Tax Relief and Health Care Act of 2006 revising section 664(c) was signed into law on December 20, 2006, and became

effective for tax years beginning after December 31, 2006. Consequently, charitable remainder trusts had 11 days to make changes in their investments in response to the legislation.

The Treasury Department and the IRS have carefully considered the concerns of the commentators and the request for transitional relief, but have not adopted this comment. The primary objective of adopting the tax on UBTI was to eliminate a source of unfair competition by placing the unrelated business activities of certain exempt organizations on the same tax basis as the nonexempt businesses with which they compete. See § 1.513-1(b). The provision denying the income tax exemption for charitable remainder trusts in years in which the trust has UBTI was enacted because Congress did “not believe that it is appropriate to allow the unrelated business income tax to be avoided by the use of a charitable remainder trust rather than a tax-exempt organization”. See Public Law 91-172, Senate Report 91-552 (H.R. 13270), CB 1969-3, P. 481-2. The sanction imposed under prior law on a charitable remainder trust investing in UBTI-producing asset(s), specifically the loss of tax-exempt status, was generally viewed as particularly onerous. Section 424 of the Act changed the sanction to alleviate its severity, but did not reflect any change in the long-standing policy to sanction and thus to discourage such investment by charitable remainder trusts.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This reporting burden flows directly from the statute implemented by these regulations. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Drafting Information

The principal author of the regulations is Cynthia Morton, Office of the Associate Chief Counsel (Passthroughs and Special Industries).

## List of Subjects

### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### 26 CFR Part 602

Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

### PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.664-1 is amended as follows:

■ 1. In paragraph (a)(1)(i), the last sentence is revised and two sentences are added to the end of the paragraph.

■ 2. Paragraph (c) is revised.

■ 3. In paragraph (d)(2), the fourth sentence is revised.

The revisions and addition read as follows:

#### § 1.664-1 Charitable remainder trusts.

(a) \* \* \* (1) \* \* \* (i) \* \* \* A trust created after July 31, 1969, which is a charitable remainder trust, is exempt from all of the taxes imposed by subtitle A of the Code for any taxable year of the trust, except for a taxable year beginning before January 1, 2007, in which it has unrelated business taxable income. For taxable years beginning after December 31, 2006, an excise tax, treated as imposed by chapter 42, is imposed on charitable remainder trusts that have unrelated business taxable income. See paragraph (c) of this section.

(c) *Excise tax on charitable remainder trusts—(1) In general.* For each taxable year beginning after December 31, 2006, in which a charitable remainder annuity trust or a charitable remainder unitrust has any unrelated business taxable income, an excise tax is imposed on that trust in an amount equal to the amount of such unrelated business taxable income. For this purpose, unrelated business taxable income is as defined in section 512, determined as if part III, subchapter F, chapter 1, subtitle A of the Internal Revenue Code applied to

such trust. Such excise tax is treated as imposed by chapter 42 (other than subchapter E) and is reported and payable in accordance with the appropriate forms and instructions. Such excise tax shall be allocated to corpus and, therefore, is not deductible in determining taxable income distributed to a beneficiary. (See paragraph (d)(2) of this section.) The charitable remainder trust income that is unrelated business taxable income constitutes income of the trust for purposes of determining the character of the distribution made to the beneficiary. Income of the charitable remainder trust is allocated among the charitable remainder trust income categories in paragraph (d)(1) of this section without regard to whether any part of that income constitutes unrelated business taxable income under section 512.

(2) *Examples.* The application of the rules in this paragraph (c) may be illustrated by the following examples:

*Example 1.* For 2007, a charitable remainder annuity trust with a taxable year beginning on January 1, 2007, has \$60,000 of ordinary income, including \$10,000 of gross income from a partnership that constitutes unrelated business taxable income to the trust. The trust has no deductions that are directly connected with that income. For that same year, the trust has administration expenses (deductible in computing taxable income) of \$16,000, resulting in net ordinary income of \$44,000. The amount of unrelated business taxable income is computed by taking gross income from an unrelated trade or business and deducting expenses directly connected with carrying on the trade or business, both computed with modifications under section 512(b). Section 512(b)(12) provides a specific deduction of \$1,000 in computing the amount of unrelated business taxable income. Under the facts presented in this example, there are no other modifications under section 512(b). The trust, therefore, has unrelated business taxable income of \$9,000 (\$10,000 minus the \$1,000 deduction under section 512(b)(12)). Undistributed ordinary income from prior years is \$12,000 and undistributed capital gains from prior years are \$50,000. Under the terms of the trust agreement, the trust is required to pay an annuity of \$100,000 for year 2007 to the noncharitable beneficiary. Because the trust has unrelated business taxable income of \$9,000, the excise tax imposed under section 664(c) is equal to the amount of such unrelated business taxable income, \$9,000. The character of the \$100,000 distribution to the noncharitable beneficiary is as follows: \$56,000 of ordinary income (\$44,000 from current year plus \$12,000 from prior years), and \$44,000 of capital gains. The \$9,000 excise tax is allocated to corpus, and does not reduce the amount in any of the categories of income under paragraph (d)(1) of this section. At the beginning of year 2008, the amount of undistributed capital gains is \$6,000, and there is no undistributed ordinary income.

*Example 2.* During 2007, a charitable remainder annuity trust with a taxable year beginning on January 1, 2007, sells real estate generating gain of \$40,000. Because the trust had obtained a loan to finance part of the purchase price of the asset, some of the income from the sale is treated as debt-financed income under section 514 and thus constitutes unrelated business taxable income under section 512. The unrelated debt-financed income computed under section 514 is \$30,000. Assuming the trust receives no other income in 2007, the trust will have unrelated business taxable income under section 512 of \$29,000 (\$30,000 minus the \$1,000 deduction under section 512(b)(12)). Except for section 512(b)(12), no other exceptions or modifications under sections 512–514 apply when calculating unrelated business taxable income based on the facts presented in this example. Because the trust has unrelated business taxable income of \$29,000, the excise tax imposed under section 664(c) is equal to the amount of such unrelated business taxable income, \$29,000. The \$29,000 excise tax is allocated to corpus, and does not reduce the amount in any of the categories of income under paragraph (d)(1) of this section. Regardless of how the trust's income might be treated under sections 511–514, the entire \$40,000 is capital gain for purposes of section 664 and is allocated accordingly to and within the second of the categories of income under paragraph (d)(1) of this section.

(3) *Effective/applicability date.* This paragraph (c) is applicable for taxable years beginning after December 31, 2006. The rules that apply with respect to taxable years beginning before January 1, 2007, are contained in § 1.664–1(c) as in effect prior to June 24, 2008. (See 26 CFR part 1, § 1.664–1(c)(1) revised as of April 1, 2007.)

(d) \* \* \*  
 (2) \* \* \* All taxes imposed by chapter 42 of the Code (including without limitation taxes treated under section 664(c)(2) as imposed by chapter 42) and, for taxable years beginning prior to January 1, 2007, all taxes imposed by subtitle A of the Code for which the trust is liable because it has unrelated business taxable income, shall be allocated to corpus. \* \* \*

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

■ **Par. 3.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 4.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table as follows:

**§ 602.101 OMB Control numbers.**  
 \* \* \* \* \*

(b) \* \* \*

CFR part of section where identified and described	Current OMB control No.
* * * * *	*
1.664–1(c) .....	1545–2101
* * * * *	*

**Linda E. Stiff,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: June 18, 2008.

**Eric Solomon,**  
*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 08–1380 Filed 6–19–08; 1:29 pm]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DoD.  
**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS STOCKDALE (DDG 106) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**DATES:** This rule is effective June 24, 2008 and is applicable beginning 13 June 2008.

**FOR FURTHER INFORMATION CONTACT:** Commander M. Robb Hyde, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone: 202–685–5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy

amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS STOCKDALE (DDG 106) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 3(c), pertaining to

placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

**PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972**

■ 1. The authority citation for part 706 continues to read:

**Authority:** 33 U.S.C. 1605.

■ 2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS STOCKDALE (DDG 106):

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS STOCKDALE .....	DDG 106 .....	1.90 meters.

■ 3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical

order, the following entry for USS STOCKDALE (DDG 106):

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

Vessel	Number	Obstruction angle relative ship's headings (degrees)
USS STOCKDALE .....	DDG 106 .....	107.08 thru 112.50.

■ 4. Table Five of § 706.2 is amended by adding, in numerical order, the

following entry for USS STOCKDALE (DDG 106):

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

**TABLE FIVE**

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
USS STOCKDALE .....	DDG 106	X	X	X	14.5

Approved: June 13, 2008.

**M. Robb Hyde,**

*Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).*

[FR Doc. E8-14195 Filed 6-23-08; 8:45 am]

BILLING CODE 3810-FF-P

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS TRUXTUN (DDG 103) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**DATES:** This rule is effective June 24, 2008 and is applicable beginning 13 June 2008.

**FOR FURTHER INFORMATION CONTACT:** Commander M. Robb Hyde, JAGC, U.S.

Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374-5066, telephone: 202-685-5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS TRUXTUN (DDG 103) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest

possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

**PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972**

■ 1. The authority citation for part 706 continues to read:

**Authority:** 33 U.S.C. 1605.

■ 2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS TRUXTUN (DDG 103):

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS TRUXTUN	DDG 103	1.86 meters.

■ 3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical

order, the following entry for USS TRUXTUN (DDG 103):

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

Vessel	Number	Obstruction angle relative ship's headings
USS TRUXTUN	DDG 103	110.02 thru 112.50 [degrees].



■ 4. Table Five of § 706.2 is amended by adding, in numerical order, the

following entry for USS TRUXTUN (DDG 103):

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward mast-head light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
USS TRUXTUN .....	DDG 103 .....	X	X	X	14.6
*	*	*	*	*	*

Approved: June 13, 2008.

**M. Robb Hyde,**

*Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).*

[FR Doc. E8-14196 Filed 6-23-08; 8:45 am]

BILLING CODE 3810-FF-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG-2008-0315]

RIN 1625-AA11

**Regulated Navigation Area; Chesapeake and Delaware Canal, Chesapeake City Anchorage Basin, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary regulated navigation area (RNA) in certain waters of the Chesapeake and Delaware (C & D) Canal, within the anchorage basin at Chesapeake City, Maryland, on June 28, 2008. This RNA is necessary to provide for the safety of life, property and the environment. This RNA restricts the movement of vessels throughout the anchorage basin during the Town of Chesapeake City's Canal Day 2008 event.

**DATES:** This rule is effective from 8 a.m. on June 24, 2008 through 12 p.m. on June 29, 2008.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-0315 and are available online at <http://www.regulations.gov>. This material is also available for inspection or copying at two locations: The Docket

Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and U. S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland 21226-1791 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have any questions on this temporary rule, call Mr. Ronald L. Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576-2674 or (410) 576-2693. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone number (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest since immediate action is needed to prevent vessel traffic from transiting the specified waters to provide for the safety

of life and property on navigable waters. Additionally, the RNA should have minimal impact on vessel transits due to the fact that vessels can safely transit through the RNA when authorized by the Captain of the Port or his Representative and that they are not precluded from using any portion of the waterway except the RNA itself.

For the same reasons above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

**Background and Purpose**

On the last Saturday in June, thousands of people attend the Town of Chesapeake City's Canal Day outdoor waterfront festival, located adjacent to the C & D Canal anchorage basin at Chesapeake City, Maryland. The event began in 1975 as an arts festival to raise funds for local organizations. Due to the growing presence of visiting boaters in recent years, the event has become increasingly congested. The last Canal Day on June 30, 2007 brought an estimated 400 boats and 10,000 visitors to Chesapeake City, a town with a population of 800. An estimated 325 recreational boats were anchored or moored alongside other boats (rafted). These boats accounted for approximately 600 visitors. Persons on recreational vessels or other water craft began arriving on the Wednesday before the festival, and by that evening, large lines of rafted boats filled the anchorage basin, the size of which is approximately 420 yards in length and 170 yards in width. By Thursday afternoon, two days before Canal Day, the gathering of persons and vessels exceeded a safe limit. On a typical weekend, ten to fifteen boats anchor in the basin. Accidental drownings, personal injuries, boat fires, boat capsizings and sinkings, and boating

collisions all are a safety concern during such overcrowded events. Access on the water for emergency response is critical. The Coast Guard has the authority to impose appropriate controls on activities that may pose a threat to persons, vessels and facilities under its jurisdiction. The Coast Guard is establishing a temporary RNA that will be enforced during a waterfront festival held in the C & D Canal, within the anchorage basin at Chesapeake City, Maryland. This rule is needed to control movement within a waterway that is expected to be populated by persons and vessels seeking to attend the Canal Day 2008 festival.

#### Discussion of Rule

On June 28, 2008, the Town of Chesapeake City, Maryland will sponsor an outdoor festival located adjacent to the C & D Canal anchorage basin, at Chesapeake City, Maryland. The planned event is a one-day waterfront festival, held during daytime and nighttime hours. The Coast Guard anticipates a large recreational boating fleet during this event. Due to the need for vessel control before, during and after the scheduled event, vessel traffic will be restricted to provide for the safety of persons and vessels within the anchorage basin and transiting vessels within the C & D Canal.

The purpose of this rule is to promote maritime safety, and to protect the environment and mariners transiting the area from the potential hazards associated with a large gathering of recreational vessels and other watercraft in a confined area with swimmers and others present. This rule proposes to establish a temporary RNA within the C & D Canal anchorage basin, located at Chesapeake City, Maryland. The rule will impact the movement of all persons and vessels in the C & D Canal anchorage basin, and will limit the density of vessels and other watercraft operating, remaining or anchoring within the C & D Canal anchorage basin at the discretion of the Captain of the Port, Baltimore, Maryland, to ensure an open water route remains accessible to law enforcement and emergency personnel during the effective period. Public vessels, and vessels and other watercraft moored to piers or docks located within the anchorage basin, will not contribute to the density determination. Interference with normal port operations is unlikely; however, if required, interference with normal port operations will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled event.

#### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### *Regulatory Planning and Review*

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.

Though the RNA will be in effect for four days, commercial traffic in the C & D Canal anchorage basin is limited, and vessels transiting the C & D Canal may proceed safely around the Regulated Navigation Area. Additionally, the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

#### 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 will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate, remain or anchor within the C & D Canal anchorage basin, in Chesapeake City, Maryland, from 8 a.m. on June 24, 2008 through 12 p.m. on June 29, 2008. This temporary RNA will not have a significant economic impact on a substantial number of small entities for the following reasons. Though this rule will be in effect for four days, commercial vessel traffic in this area is limited. Although the RNA applies to the entire anchorage basin, traffic would be allowed to pass within the RNA with the permission of the Coast Guard Captain of the Port Baltimore, Maryland. Vessels transiting the C & D Canal may proceed safely around the RNA. Also, the Coast Guard will issue maritime advisories widely available to users of

the waterway before the effective period.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of the Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). 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 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 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.ID 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, under the Instruction, 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. A final "Environmental Analysis Check List" supporting this 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, and 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; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–0315 to read as follows:

#### § 165.T05–0315 Regulated Navigation Area; Chesapeake and Delaware Canal, Chesapeake City Anchorage Basin, MD.

(a) *Location.* The following area is a regulated navigation area: All waters of the Chesapeake and Delaware (C & D) Canal, surface to bottom, within the anchorage basin at Chesapeake City, Maryland.

(b) *Definition.* The 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 to act on his behalf.

(c) *Regulations.* The general regulations governing regulated

navigation areas, found in Sec. 165.13, apply to the regulated navigation area described in paragraph (a) of this section.

(1) Vessels and other watercraft operating, remaining or anchoring within the regulated navigation area are limited, at the discretion of the Captain of the Port, Baltimore Maryland, to a vessel density that ensures an open water route remains accessible to law enforcement and emergency personnel. Public vessels, and vessels and other watercraft moored directly alongside piers or docks located within the regulated navigation area, will be excluded from consideration in the density assessment.

(2) All vessels and persons are prohibited from entering this regulated navigation area, except as authorized by the Captain of the Port Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage within the regulated navigation area must request authorization from the Captain of the Port, Baltimore Maryland by telephone at (410) 576–2693 or by marine band radio on VHF-FM Channel 16 (156.8 MHz) on the day of this event, June 28, 2008.

(4) All Coast Guard vessels enforcing this regulated navigation area can be contacted on marine band radio VHF-FM Channel 16 (156.8 MHz).

(5) The operator of any vessel located within or in the immediate vicinity of this regulated navigation area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(d) *Enforcement Period:* This section will be effective from 8 a.m. on June 24, 2008 through 12 p.m. on June 29, 2008.

Dated: June 19, 2008.

**Fred M. Rosa Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. E8–14387 Filed 6–23–08; 8:45 am]

**BILLING CODE 4910–15–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 89**

**Control of Emissions From New and In-Use Nonroad Compression-Ignition Engines**

*CFR Correction*

In Title 40 of the Code of Federal Regulations, parts 87 to 99, revised as of

July 1, 2007, on page 46, in § 89.6, paragraphs (b)(2) and (3) are reinstated to read as follows;

**§ 89.6 Reference materials.**

\* \* \* \* \*

(b) \* \* \*

(2) *SAE material.* The following table sets forth material from the Society of Automotive Engineers which has been incorporated by reference. The first column lists the number and name of

the material. The second column lists the section(s) of this part, other than § 89.6, in which the matter is referenced. The second column is presented for information only and may not be all inclusive. Copies of these materials may be obtained from Society of Automotive Engineers International, 400 Commonwealth Dr., Warrendale, PA 15096-0001.

Document number and name	40 CFR part 89 reference
SAE J244 June 83: Recommended Practice for Measurement of Intake Air or Exhaust Gas Flow of Diesel Engines .....	89.416-96
SAE J1937 November 89: Recommended Practice for Engine Testing with Low Temperature Charge Air Cooler Systems in a Dynamometer Test Cell	89.327-96
SAE Paper 770141: Optimization of a Flame Ionization Detector for Determination of Hydrocarbon in Diluted Automotive Exhausts, Glenn D. Reschke .....	89.319-96

(3) *California Air Resources Board Test Procedure.* The following table sets forth material from the Title 13, California Code of Regulations, Sections 2420-2427, as amended by California Air Resources Board Resolution 92-2 and published in California Air

Resources Board mail out #93-42, September 1, 1993) which has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of this part, other than § 89.6, in which the matter is

referenced. The second column is presented for information only and may not be all inclusive. Copies of these materials may be obtained from California Air Resources Board, Haagen-Smit Laboratory, 9528 Telstar Avenue, El Monte, CA 91731-2990.

Document number and name	40 CFR part 89 reference
California Regulations for New 1996 and Later Heavy-Duty Off-Road Diesel Cycle Engines .....	89.112-96 89.119-96 89.508-96

[FR Doc. E8-14279 Filed 6-23-08; 8:45 am]  
BILLING CODE 1505-01-D

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Parts 3000, 3100, 3150, 3200, 3500, 3580, 3600, 3730, 3810, and 3830**

[WO-320-1990-PO-24 1A]

RIN 1004-AC64

**Oil and Gas Leasing; Geothermal Resources Leasing; Coal Management; Management of Solid Minerals Other Than Coal; Mineral Materials Disposal; and Mining Claims Under the General Mining Laws**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to the final regulations in 43 CFR parts 3000, 3100, 3150, 3200, 3500, 3580, 3600, 3730, 3810, 3830 Oil and Gas Leasing; Geothermal Resources

Leasing; Coal Management; Management of Solid Minerals Other Than Coal; Mineral Materials Disposal; and Mining Claims Under the General Mining Laws, which were published in the *Federal Register* (70 FR 58853-58880) of October 7, 2005.

**DATES:** The correcting amendment is effective June 24, 2008.

**FOR FURTHER INFORMATION CONTACT:** Cynthia L. Ellis, Division of Regulatory Affairs, Washington, DC 202-452-5012.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Need for Correction*

This correction is necessary because in the 2005 final regulation we inserted a new paragraph (b) in section 3602.31, without changing a subsequent cross-reference to reflect the new paragraph. The current regulations, therefore, have an inaccurate cross-reference. Inserting new paragraph (b) in the 2005 final rule without fixing the cross-reference in paragraph (d) raised the question whether an exception stated in paragraph (d) applies to volume

limitations stated in paragraph (c), which was paragraph (b) before the 2005 rule inserted the new paragraph (b). This correction remedies this uncertainty.

**List of Subjects**

*43 CFR Part 3000*

Public lands—mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3100*

Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

*43 CFR Part 3150*

Administrative practice and procedure, Alaska, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

*43 CFR Part 3200*

Geothermal energy, Government contracts, Mineral royalties, Public

lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3500

Government contracts, Hydrocarbons, Mineral royalties, Mines, Phosphate, Potassium, Public lands—mineral resources, Reporting and recordkeeping requirements, Sodium, Sulfur, Surety bonds.

43 CFR Part 3580

Government contracts, Mineral royalties, Mines, Public lands—mineral resources, Recreation and recreation areas, Surety bonds.

43 CFR Part 3600

Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3730

Administrative practice and procedure, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3810

Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3830

Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Ted R. Hudson,

Acting Division Chief, Division of Regulatory Affairs.

PART 3600—MINERAL MATERIALS DISPOSAL

■ 1. The authority citation for part 3600 continues to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.*, 301–306, 351–359, and 601 *et seq.*; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97–35, 95 Stat. 357.

\* \* \* \* \*

■ 2. Revise paragraph 3602.31(d) to read as follows:

§ 3602.31 What volume limitations and fees generally apply to noncompetitive mineral materials sales?

\* \* \* \* \*

(d) The volume limitations in paragraphs (a) and (c) of this section do not apply to sales in the State of Alaska that BLM determines are needed for construction, operation, maintenance, or termination of the Trans-Alaska Pipeline System or the Alaska Natural Gas Transportation System.

\* \* \* \* \*

[FR Doc. E8–14215 Filed 6–23–08; 8:45 am]

BILLING CODE 4310–84–P

# Proposed Rules

Federal Register

Vol. 73, No. 122

Tuesday, June 24, 2008

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-2008-0669; Directorate Identifier 2007-NM-350-AD]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 737-600, -700, and -800 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 737-600, -700, and -800 series airplanes. This proposed AD would require inspecting the free flange of the lower stringers of the wing center section for drill starts, and applicable related investigative and corrective actions. This proposed AD results from drill starts being found on the free flange of the lower stringers of the wing center section during a quality assurance inspection at the final assembly plant. We are proposing this AD to prevent cracks from propagating from drill starts in the free flange of the lower stringers of the wing center section, which could cause a loss of structural integrity of the wing center section and may result in a fuel leak.

**DATES:** We must receive comments on this proposed AD by August 8, 2008.

**ADDRESSES:** You may send comments by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** 202-493-2251.

- **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.

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor,

Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207.

#### Examining the AD Docket

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

#### 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 send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0669; Directorate Identifier 2007-NM-350-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

##### Discussion

We received reports of drill starts being found on the free flange of the lower stringers of the wing center during a quality assurance inspection at

the final assembly plant. The drill starts were caused by a manufacturing error during wing assembly. Cracks could propagate from drill starts in the free flange of the lower stringers of the wing center section. This condition, if not corrected, could result in loss of structural integrity of the wing center section and may result in a fuel leak.

#### Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737-57A1294, dated April 23, 2007. The service bulletin describes procedures for doing a detailed inspection of the free flange of the upper and lower stringers of the wing center section for drill starts, and applicable related investigative and corrective actions. The related investigative actions include doing high frequency eddy current (HFEC) open hole inspections for any cracks. The corrective actions include doing the zero-timing procedure at each drill start, oversizing the hole, installing new fasteners if the hole is within the service bulletin tolerance limits, and contacting Boeing for certain repair conditions, as applicable.

Accomplishing certain actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

#### Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of this same type design. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and Service Bulletin."

#### Differences Between the Proposed AD and Service Bulletin

Although Boeing Alert Service Bulletin 737-57A1294, dated April 23, 2007, specifies a detailed inspection and applicable related investigative and corrective actions of the free flange of the upper and lower stringers of the wing center section, this proposed AD would require those actions for only the lower stringers of the wing center section. The lower stringers are the tension surface of the wing box, and therefore are subject to cracking. We do

not consider cracking of the upper surface a safety issue.

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the

certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

#### Costs of Compliance

We estimate that this proposed AD would affect 17 airplanes of U.S. registry. We also estimate that it would take 7 work-hours per product to comply with this proposed AD. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be \$9,520, or \$560 per product.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

We determined that this 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 this 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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

#### 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 FAA amends § 39.13 by adding the following new AD:

**Boeing:** Docket No. FAA-2008-0669; Directorate Identifier 2007-NM-350-AD.

#### Comments Due Date

(a) We must receive comments by August 8, 2008.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Boeing Model 737-600, -700, and -800 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737-57A1294, dated April 23, 2007.

#### Unsafe Condition

(d) This proposed AD results from drill starts being found on the free flange of the lower stringers of the wing center during a quality assurance inspection at the final assembly plant. We are proposing this AD to prevent cracks from propagating from drill starts in the free flange of the wing center section lower stringers, which could cause a loss of structural integrity of the wing center section and may result in a fuel leak.

#### Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

#### Inspection and Related Investigative and Corrective Actions

(f) Before the accumulation of 18,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs

later, do a detailed inspection of the free flange of the lower stringers of the wing center section for any drill start, and do any applicable related investigative and corrective actions, by accomplishing all the applicable actions specified in paragraphs 3.B.2. and 3.B.4. of the Accomplishment Instructions of the Boeing Alert Service Bulletin 737-57A1294, dated April 23, 2007; except as provided in paragraph (g) of this AD. The applicable related investigative and corrective actions must be done before further flight.

(g) If any crack is found during any inspection required by paragraph (f) of this AD, and Boeing Alert Service Bulletin 737-57A1294, dated April 23, 2007, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (h) of this AD.

#### Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: 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 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 must meet the certification basis of the airplane.

Issued in Renton, Washington, on June 12, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8-14185 Filed 6-23-08; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2008-0672; Directorate Identifier 2008-NM-032-AD]

RIN 2120-AA64

**Airworthiness Directives; Airbus Model A330-200, A330-300, and A340-300 Series Airplanes****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

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

During manufacturing of A330/A340 aircraft framework, cracks have been found on Frame (FR) 12, left (LH) and right (RH) sides. It has been confirmed that a defect of the FR12 forming tool press is the root cause of the cracks.

If undetected such damage could affect, after propagation, the structural integrity of the aircraft.

\* \* \* \* \*

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by July 24, 2008.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *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.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

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

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

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0672; Directorate Identifier 2008-NM-032-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007-0302, dated December 14, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During manufacturing of A330/A340 aircraft framework, cracks have been found on Frame (FR) 12, left (LH) and right (RH) sides. It has been confirmed that a defect of the FR12 forming tool press is the root cause of the cracks.

If undetected such damage could affect, after propagation, the structural integrity of the aircraft.

In order to permit an early detection and repair of cracks on FR12, LH and RH sides, this Airworthiness Directive (AD) mandates a one time High Frequency Eddy Current (HFEC) inspection of FR12.

Corrective actions include, for certain findings, contacting Airbus for repair instructions and doing the repair; repairing cracking (i.e., installing a new

splice); and applying new protective coatings and corrosion inhibitors. You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Airbus has issued Service Bulletins A330-53-3174 and A340-53-4177, both dated October 10, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Differences Between This AD and the MCAI or Service Information**

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

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

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 20 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Required parts would cost about \$0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S.



operators to be \$4,800, or \$240 per product.

### Authority for This Rulemaking

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

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

### Regulatory Findings

We determined that this 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 this 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.

### 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 FAA amends § 39.13 by adding the following new AD:

**Airbus:** Docket No. FAA-2008-0672; Directorate Identifier 2008-NM-032-AD.

### Comments Due Date

(a) We must receive comments by July 24, 2008.

### Affected ADs

(b) None.

### Applicability

(c) This AD applies to Airbus Model A330-200, A330-300, and A340-300 series airplanes; certificated in any category; all certified models, all manufacturing serial numbers (MSN) from MSN 0489 through 0722 inclusive, and MSN 0725, 0726, 0728, 0730, 0732, and 0734.

### Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

### Reason

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

During manufacturing of A330/A340 aircraft framework, cracks have been found on Frame (FR) 12, left (LH) and right (RH) sides. It has been confirmed that a defect of the FR12 forming tool press is the root cause of the cracks.

If undetected such damage could affect, after propagation, the structural integrity of the aircraft.

In order to permit an early detection and repair of cracks on FR12, LH and RH sides, this Airworthiness Directive (AD) mandates a one time High Frequency Eddy Current (HFEC) inspection of FR12.

Corrective actions include, for certain findings, contacting Airbus for repair instructions and doing the repair; repairing cracking (i.e., installing a new splice); and applying new protective coatings and corrosion inhibitors.

### Actions and Compliance

(f) Unless already done, do the following actions.

(1) Prior to the accumulation of 19,500 total flight cycles or within 3 months after the effective date of this AD, whichever occurs later: Perform a HFEC inspection at the LH (left-hand) and RH (right-hand) sides of frame 12, in accordance with the instructions defined in Airbus Service Bulletin A330-53-3174 or A340-53-4177, both dated October 10, 2007, as applicable. If no cracking is found, no further action is required by this AD. Except as required by paragraph (f)(2) of this AD, if any cracking is found, before further flight, do the applicable corrective actions in accordance with the instructions of Airbus Service Bulletin A330-53-3174 or A340-53-4177, as applicable.

(2) If any cracking is found that exceeds the limits specified in Airbus Service Bulletin A330-53-3174 or A340-53-4177, both dated October 10, 2007, as applicable; or if any cracking is found during any HFEC inspection of the cut-out area; before further flight, contact Airbus for repair instructions and do the repair.

### FAA AD Differences

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

### Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

### Related Information

(h) Refer to European Aviation Safety Agency (EASA) Airworthiness Directive 2007-0302, dated December 14, 2007, and Airbus Service Bulletins A330-53-3174 and A340-53-4177, both dated October 10, 2007, for related information.

Issued in Renton, Washington, on June 17, 2008.

### Dionne Palermo,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. E8-14186 Filed 6-23-08; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2008-0668; Directorate Identifier 2008-NM-088-AD]

RIN 2120-AA64

**Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 190 Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

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

During aircraft structure fatigue tests, cracks were found in the wing lower skin stringers between ribs 7 and 10 on both wings. In order to prevent fatigue cracks in the wing lower skin stringers, which could result in fuel leakage and reduced structural integrity of the wing, the referred stringers must be reworked.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by July 24, 2008.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *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.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

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

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

**FOR FURTHER INFORMATION CONTACT:**

Kenny Kaulia, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2848; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the

**ADDRESSES** section. Include "Docket No. FAA-2008-0668; Directorate Identifier 2008-NM-088-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2008-01-02, effective February 25, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During aircraft structure fatigue tests, cracks were found in the wing lower skin stringers between ribs 7 and 10 on both wings. In order to prevent fatigue cracks in the wing lower skin stringers, which could result in fuel leakage and reduced structural integrity of the wing, the referred stringers must be reworked.

The corrective actions include spot-facing the lower wing stringers between ribs 7 and 10, doing a dye-penetrant inspection of the reworked stringers, shot-peening if no cracking is found, contacting ANAC if any crack is found, and repairing. You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

EMBRAER has issued Service Bulletin 190-57-0005, Revision 01, dated

October 27, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Differences Between This AD and the MCAI or Service Information**

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

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

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 18 products of U.S. registry. We also estimate that it would take about 110 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$158,400, or \$8,800 per product.

**Authority for This Rulemaking**

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with

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

### Regulatory Findings

We determined that this 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 this 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.

### 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 FAA amends § 39.13 by adding the following new AD:

**Empresa Brasileira De Aeronautica S.A. (EMBRAER);** Docket No. FAA-2008-0668; Directorate Identifier 2008-NM-088-AD.

#### Comments Due Date

(a) We must receive comments by July 24, 2008.

#### Affected ADs

(b) None.

### Applicability

(c) This AD applies to EMBRAER Model ERJ 190-100 STD, -100 LR, -100 IGW, -100ECJ, -200 STD, -200 LR, and -200 IGW airplanes, certificated in any category, serial numbers 19000004, 19000006 through 19000028 inclusive, and 19000030 through 19000039 inclusive.

### Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

### Reason

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

During aircraft structure fatigue tests, cracks were found in the wing lower skin stringers between ribs 7 and 10 on both wings. In order to prevent fatigue cracks in the wing lower skin stringers, which could result in fuel leakage and reduced structural integrity of the wing, the referred stringers must be reworked.

The corrective actions include spot-facing the lower wing stringers between ribs 7 and 10, doing a dye-penetrant inspection of the reworked stringers, shot-peening if no cracking is found, contacting Agência Nacional de Aviação Civil (ANAC) if any crack is found, and repairing.

### Actions and Compliance

(f) Unless already done: Prior to the accumulation of 5,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later, do the following actions.

(1) Spot-face the lower wing stringers between ribs 7 and 10 on both wings by changing their run out in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190-57-0005, Revision 01, dated October 27, 2006.

(2) Do a dye-penetrant inspection for cracking of the reworked stringers in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190-57-0005, Revision 01, dated October 27, 2006.

(i) If no cracking is detected: Before further flight, shot-peen the stringer reworked area following the parameters indicated in the Accomplishment Instructions of EMBRAER Service Bulletin 190-57-0005, Revision 01, dated October 27, 2006.

(ii) If any cracking is detected: Before further flight, contact the ANAC for repair instructions and repair.

(3) Actions done before the effective date of this AD in accordance with EMBRAER Service Bulletin 190-57-0005, dated October 10, 2006, are acceptable for compliance with the requirements of paragraph (f) of this AD.

### FAA AD Differences

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

### Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM-116, Transport Airplane

Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kenny Kaulia, Aerospace Engineer, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2848; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

### Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2008-01-02, effective February 25, 2008, and EMBRAER Service Bulletin 190-57-0005, Revision 01, dated October 27, 2006, for related information.

Issued in Renton, Washington, on June 9, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8-14187 Filed 6-23-08; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2008-0671; Directorate Identifier 2008-NM-017-AD]

RIN 2120-AA64

### Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 737-300, -400, and -500 series airplanes. This proposed AD would require repetitive high frequency eddy current (HFEC) inspections for cracking of the 1.04-inch nominal diameter wire penetration hole in the

frame and frame reinforcement, between stringers S-20 and S-21, on both the left and right sides of the airplane, and related investigative/corrective actions if necessary. This proposed AD results from reports of cracking in the frame, or in the frame and frame reinforcement, common to the 1.04-inch nominal diameter wire penetration hole intended for wire routing. We are proposing this AD to detect and correct cracking in the fuselage frames and frame reinforcements, which could reduce the structural capability of the frames to sustain limit loads, and result in cracking in the fuselage skin and subsequent rapid depressurization of the airplane.

**DATES:** We must receive comments on this proposed AD by August 8, 2008.

**ADDRESSES:** You may send comments by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** 202-493-2251.

- **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.

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

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207.

#### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6447; fax (425) 917-6590.

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0671; Directorate Identifier 2008-NM-017-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

#### Discussion

We have received reports of cracking in the frame, or in the frame and frame reinforcement, common to the 1.04-inch nominal diameter wire penetration hole intended for wire routing, between stringers S-20 and S-21, on both the left and right sides of the airplane. The cracked frames are located between station (STA) 500B and STA 520 on Model 737-300 and -400 series airplanes and between STA 482 and STA 520 on Model 737-500 series airplanes. The cracks at the 1.04-inch nominal diameter wire penetration hole are due to the effect of operating loads in combination with the stress concentration at the 1.04-inch nominal hole. The cracking initiated at the 1.04-inch nominal diameter wire penetration hole and grew towards the inner chord.

We have since received reports of more than fifty cracked frames at the 1.04-inch nominal diameter wire penetration hole on more than 20 airplanes, all either Model 737-300 or 737-500 series airplanes. The airplanes had accumulated between 35,832 and 66,694 total flight cycles.

This type of cracking has occurred at three frame stations on Model 737-300 series airplanes, at one frame station on Model 737-400 series airplanes, and at four stations on Model 737-500 series airplanes. Sixteen airplanes had cracking at multiple frames, and 10 frames had cracking at adjacent frames. Forty-three frames had cracking only at the inboard side of the 1.04-inch nominal diameter wire penetration hole in the frame inner chord or in the frames and frame reinforcement inner chord. Three of the frames had cracking in the outboard side of the 1.04-inch

nominal diameter wire penetration hole in the frame and the frame reinforcement. Two of the frames were severed. Some of the frames had additional cracking at either the standoff/tooling holes or at the 0.50-inch diameter hole positioned below the 1.04-inch nominal diameter wire penetration hole.

Cracking in the fuselage frames at the wire penetration hole intended for wire routing will reduce the structural capability of the frames to sustain limit loads. Cracking in the frames could result in cracking in the fuselage skin and subsequent rapid depressurization of the airplane.

#### Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737-53A1279, dated December 18, 2007. The service bulletin describes procedures for doing either a high frequency eddy current (HFEC) surface inspection or HFEC hole/edge inspection for cracking of the 1.04-inch nominal diameter wire penetration hole in the frame and frame reinforcement, between stringers S-20 and S-21, on both the left and right sides of the airplane. If cracking is found, the service bulletin also describes procedures for related investigative and corrective actions. The related investigative action is doing an HFEC inspection for cracking in the 0.50-inch diameter hole and all standoff/tooling holes in the frame and frame reinforcement, between stringers S-19 and S-22. The corrective action is repairing any cracking found and repeating the HFEC inspections. If additional cracking is found, the service bulletin specifies contacting Boeing for repair instructions. The service bulletin further describes procedures for a preventative modification for frames on which either the initial or repetitive inspections have been done. The preventative modification terminates the repetitive inspections.

The initial compliance time for the initial inspection is either within 3,000 or 6,000 (but not to exceed 53,000 total flight cycles) flight cycles after release of the service bulletin, depending on the number of total flight cycles on the airplane. The repetitive interval for the HFEC inspection is 14,000 flight cycles. Corrective actions must be done before further flight.

#### FAA's Determination and Requirements of this Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se)

same type design(s). This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under “Differences Between the Proposed AD and the Service Bulletin.”

**Differences Between the Proposed AD and the Service Bulletin**

The service bulletin specifies to contact the manufacturer for

instructions on how to remove damage and repair certain conditions, but this proposed AD would require removing damage and repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes

Delegation Option Authorization Organization whom we have authorized to make those findings.

**Costs of Compliance**

We estimate that this proposed AD would affect 616 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is \$80 per work hour.

**ESTIMATED COSTS**

Action	Work hours	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspection .....	Between 6 and 8 (depending on airplane configuration), per inspection cycle.	\$0	Between \$480 and \$640, per inspection cycle.	616	Between \$295,680 and \$394,240, per inspection cycle.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

We 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 this 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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

**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 FAA amends § 39.13 by adding the following new AD:

**Boeing:** Docket No. FAA-2008-0671; Directorate Identifier 2008-NM-017-AD.

**Comments Due Date**

(a) We must receive comments by August 8, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 737-300, -400, and -500 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737-53A1279, dated December 18, 2007.

**Unsafe Condition**

(d) This AD results from reports of cracking in the frame, or in the frame and frame reinforcement, common to the 1.04-inch

nominal diameter wire penetration hole intended for wire routing. We are issuing this AD to detect and correct cracking in the fuselage frames and frame reinforcements, which could reduce the structural capability of the frames to sustain limit loads, and result in cracking in the fuselage skin and subsequent rapid depressurization of the airplane.

**Compliance**

(e) Comply with this AD within the compliance times specified, unless already done.

**Service Bulletin Reference Paragraph**

(f) The term “service bulletin,” as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 737-53A1279, dated December 18, 2007.

(1) Where the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where the service bulletin specifies to contact Boeing for instructions for removing damage and repairing cracking: Before further flight, remove the damage or repair the cracking using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(3) Although the service bulletin referenced in this AD specifies to submit information to the manufacturer, this AD does not include that requirement.

**Inspections, Related Investigative and Corrective Actions**

(g) At the applicable time specified in paragraph 1.E., “Compliance,” of the service bulletin, except as specified by paragraph (f)(1) of this AD: Do a high frequency eddy current (HFEC) surface inspection or an HFEC hole/edge inspection for cracking of the 1.04-inch nominal diameter wire penetration hole in the frame and frame reinforcement, between stringer S-20 and S-21; and do all applicable related investigative and corrective actions; by accomplishing all

the actions specified in the Accomplishment Instructions of the service bulletin, except as specified by paragraphs (f)(2) and (f)(3) of this AD. Do all applicable related investigative and corrective actions before further flight. Thereafter, repeat the inspections at the applicable intervals specified in paragraph 1.E. of the service bulletin.

#### Terminating Action

(h) Doing the repair in Part 3 or the preventative modification in Part 4 of the service bulletin terminates the repetitive inspection requirements of this AD.

#### Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM-120S, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6447; fax (425) 917-6590; has the authority to approve AMOCs for this AD, if requested using 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 must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on June 8, 2008.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8-14183 Filed 6-23-08; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2008-0670; Directorate Identifier 2007-NM-339-AD]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

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

Damage to the lower lateral fittings of the 80VU rack \* \* \* [and] damage to the lower central support fitting \* \* \*.

In the worst case scenario a complete failure of the 80VU fittings in combination with a high load factor or strong vibration could lead to failure of the rack structure and/or computers or rupture/disconnection of the cable harnesses to one or more computers located in the 80VU. This rack contains computers for Flight Controls, Communication and Radio-navigation. These functions are duplicated across other racks but during critical phases of flight the multiple system failures/re-configuration may constitute an unsafe condition.

\* \* \* \* \*

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by July 24, 2008.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *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.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Tim Dulin, Aerospace Engineer, International Branch, ANM-116,

Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2141; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0670; Directorate Identifier 2007-NM-339-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

##### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007-0276, dated October 26, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Damage to the lower lateral fittings of the 80VU rack, typically elongated holes, migrated bushes [bushings], and/or missing bolts have been reported in-service. In addition damage to the lower central support fitting (including cracking) has been reported.

In the worst case scenario a complete failure of the 80VU fittings in combination with a high load factor or strong vibration could lead to failure of the rack structure and/or computers or rupture/disconnection of the cable harnesses to one or more computers located in the 80VU. This rack contains computers for Flight Controls, Communication and Radio-navigation. These functions are duplicated across other racks but during critical phases of flight the multiple system failures/re-configuration may constitute an unsafe condition.

This Airworthiness Directive (AD) mandates the repetitive inspection of the lower lateral 80VU fittings for damage and the inspection of the lower central 80VU support for damage and cracking, and the associated corrective actions as necessary with more restrictive actions than defined in Airbus Service Bulletin (SB) A320-25A1555 at its original issue.

The new requirements defined in this AD will be introduced in revision 1 of SB A320-25A1555.

The associated corrective actions include repair or replacement of the lower lateral fittings and/or central support. Replacing the 80VU support fittings eliminates the need for the repetitive inspection of the lower lateral fittings, and extends the repetitive interval for the lower central support. You may obtain further information by examining the MCAI in the AD docket.

#### Relevant Service Information

Airbus has issued Service Bulletins A320–25A1555, dated June 14, 2007; and A320–25–1557, dated June 14, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. The compliance times for doing the corrective actions are either before further flight, or within 4,500 flight cycles with repetitive inspections at intervals not to exceed 750 flight cycles until the repair is accomplished.

#### FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

#### Differences Between This AD and the MCAI or Service Information

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

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

#### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 678 products of U.S. registry. We also estimate that it would take about 82 work-hours per product to comply with the basic requirements of

this proposed AD. The average labor rate is \$80 per work-hour. Required parts would cost about \$2,592 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$6,205,056, or \$9,152 per product.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

We determined that this 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 this 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.

#### 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 FAA amends § 39.13 by adding the following new AD:

**Airbus:** Docket No. FAA–2008–0670; Directorate Identifier 2007–NM–339–AD.

#### Comments Due Date

- (a) We must receive comments by July 24, 2008.

#### Affected ADs

- (b) None.

#### Applicability

(c) This AD applies to Airbus Model A318–111, A318–112, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A320–111, A320–211, A320–212, A320–214, A320–231, A320–232, A320–233, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, and A321–232 airplanes, certificated in any category, except airplanes on which Airbus Modification 34804 has been embodied in production.

#### Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

#### Reason

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

Damage to the lower lateral fittings of the 80VU rack, typically elongated holes, migrated bushes [bushings], and/or missing bolts have been reported in-service. In addition, damage to the lower central support fitting (including cracking) has been reported.

In the worst case scenario a complete failure of the 80VU fittings in combination with a high load factor or strong vibration could lead to failure of the rack structure and/or computers or rupture/disconnection of the cable harnesses to one or more computers located in the 80VU. This rack contains computers for Flight Controls, Communication and Radio-navigation. These functions are duplicated across other racks but during critical phases of flight the multiple system failures/re-configuration may constitute an unsafe condition.

This Airworthiness Directive (AD) mandates the repetitive inspection of the lower lateral 80VU fittings for damage and the inspection of the lower central 80VU

support for damage and cracking, and the associated corrective actions as necessary with more restrictive actions than defined in Airbus Service Bulletin (SB) A320-25A1555 at its original issue.

The new requirements defined in this AD will be introduced in revision 1 of SB A320-25A1555.

The associated corrective actions include repair or replacement of the lower lateral fittings and/or central support. Replacing the 80VU support fittings eliminates the need for the repetitive inspection of the lower lateral fittings, and extends the repetitive interval for the lower central support.

#### Actions and Compliance

(f) Unless already done, do the following actions.

(1) Prior to the accumulation of 24,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later: Do a special detailed inspection of the 80VU rack lower lateral fittings for damage (e.g., broken fitting, missing bolts, migrated bushings, material burr, or rack in contact with the fitting) of the 80VU rack lower lateral fittings in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-25A1555, dated June 14, 2007. Except as provided by paragraph (f)(2) of this AD, repeat the inspection thereafter at the interval specified in paragraph (f)(1)(i) or (f)(1)(ii) of this AD, as applicable. Replacing the 80VU lower lateral fittings in accordance with Airbus Service Bulletin A320-25-1557, dated June 14, 2007, terminates the inspection requirements of this paragraph.

(i) If the 80VU rack lower lateral fittings have not been repaired in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-25A1555, dated June 14, 2007, repeat the inspection thereafter at intervals not to exceed 4,500 flight cycles.

(ii) If the 80VU rack lower lateral fittings have been repaired in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-25A1555, dated June 14, 2007, repeat the inspection thereafter at intervals not to exceed 24,000 flight cycles.

(2) If any damage is found during any inspection required by paragraph (f)(1) of this AD, do all applicable corrective actions (inspection and/or repair) in accordance with the Accomplishment Instructions and timeframes given in Airbus Service Bulletin A320-25A1555, dated June 14, 2007.

(3) Prior to the accumulation of 24,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later: Do a special detailed inspection of the 80VU rack lower central support for cracking in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-25A1555, dated June 14, 2007. Except as provided by paragraph (f)(4) of this AD, repeat the inspection thereafter at the interval specified in paragraph (f)(3)(i) or (f)(3)(ii) of this AD, as applicable.

(i) If the 80VU rack lower central support has not been repaired or replaced in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-25A1555, dated June 14, 2007; or Airbus

Service Bulletin A320-25-1557, dated June 14, 2007; repeat the inspection thereafter at the interval specified in paragraph (f)(3)(i)(A) or (f)(3)(i)(B) of this AD, as applicable.

(A) For airplanes on which the lower central support has accumulated more than 30,000 total flight cycles as of the effective date of this AD: At intervals not to exceed 500 flight cycles.

(B) For airplanes on which the lower central support has accumulated 30,000 total flight cycles or fewer as of the effective date of this AD: At intervals not to exceed 4,500 flight cycles, without exceeding 30,750 total flight cycles for the first repetitive inspection.

(ii) If the 80VU rack lower central support has been repaired or replaced in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-25A1555, dated June 14, 2007; or Airbus Service Bulletin A320-25-1557, dated June 14, 2007; repeat the inspection thereafter at intervals not to exceed 24,000 flight cycles.

(4) If any crack is found during any inspection required by paragraph (f)(3) of this AD, do the action in paragraph (f)(4)(i) or (f)(4)(ii) of this AD, as applicable.

(i) If the crack length is more than 40 mm on the front or the rear sheet of the lower central support, as shown in Figure 3, Sheet 2 of Airbus Service Bulletin A320-25A1555, dated June 14, 2007, or if any crack is found on the upper sheet of the lower central support as shown in Figure 3, Sheet 3 of Airbus Service Bulletin A320-25A1555, dated June 14, 2007: Before further flight, repair or replace the lower central support in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-25A1555, dated June 14, 2007; or Airbus Service Bulletin A320-25-1557, dated June 14, 2007; as applicable.

(ii) If the crack length is 40 mm or less on the front or the rear sheet, as specified in Figure 3, Sheet 2 of Service Bulletin A320-25A1555, dated June 14, 2007: Within 20 months or 4,500 flight cycles after the crack finding, whichever occurs first, repair or replace the lower central support in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-25A1555, dated June 14, 2007; or A320-25-1557, dated June 14, 2007, as applicable. Until the repair or replacement of the lower central support is accomplished, repeat the inspection required by paragraph (f)(3) of this AD thereafter at intervals not to exceed 500 flight cycles.

#### FAA AD Differences

**Note 1:** This AD differs from the MCAI and/or service information as follows: No differences.

#### Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, ANM-116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Dulin, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate,

FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2141; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007-0276, dated October 26, 2007; Airbus Service Bulletin A320-25A1555, dated June 14, 2007; and Airbus Service Bulletin A320-25-1557, dated June 14, 2007, for related information.

Issued in Renton, Washington, on June 8, 2008.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8-14184 Filed 6-23-08; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2008-0667; Directorate Identifier 2008-NM-009-AD]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A330-200, A330-300, and A340-300 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

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

During fatigue tests (EF3) on the A340-600, damages were found in longitudinal doubler



at VTP (vertical tail plane) attachment cutout between Frame (FR) 80 and FR86. This damage occurred between 58341 and 72891 simulated flight cycles (FC).

Due to the higher Design Service Goal and different design (e.g. doubler thickness) [of the] A330-200/-300 and A340-300 aircraft series, the damage assessment concluded [there was] potential impact on [the airplanes specified in the] applicability.

\* \* \* \* \*

The unsafe condition is crack propagation in the VTP attachment cutout, which could reduce airplane structural integrity in the tail section. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by July 24, 2008.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *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.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### Examining the AD Docket

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

#### FOR FURTHER INFORMATION CONTACT:

Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No.

FAA-2008-0667; Directorate Identifier 2008-NM-009-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

#### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007-0284, dated November 12, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During fatigue tests (EF3) on the A340-600, damages were found in longitudinal doubler at VTP (vertical tail plane) attachment cutout between Frame (FR) 80 and FR86. This damage occurred between 58341 and 72891 simulated Flight Cycles (FC).

Due to the higher Design Service Goal and different design (e.g. doubler thickness) [of the] A330-200/-300 and A340-300 aircraft series, the damage assessment concluded [there was] potential impact on [the airplanes specified in the] applicability.

[T]o allow early detection of cracks, which could [prevent] possible crack propagation and consequently maintain the structural integrity of the upper shell structure between FR80 and FR86, this Airworthiness Directive (AD) mandates an inspection program [for cracking] of this area using a high frequency eddy current (HFEC) method, and a modification to improve the upper shell structure.

The unsafe condition is crack propagation in the VTP attachment cutout, which could reduce airplane structural integrity in the tail section. Corrective actions include doing eddy current inspections for cracking of certain fastener rows, and contacting Airbus for repair instructions and repairing. You may obtain further information by examining the MCAI in the AD docket.

#### Relevant Service Information

Airbus has issued the service bulletins specified in the following table. The compliance times in paragraph 1.E.(2) of the service bulletins range from 14,200 total flight cycles through 27,900 total flight cycles (for the initial inspection); from 1,700 flight cycles or 11,900 flight hours, whichever

occurs first, through 4,600 flight cycles or 14,000 flight hours, whichever occurs first (for the repetitive inspection intervals); and from 10,700 total flight cycles through 14,200 total flight cycles (for the modification); depending upon airplane model and weight variant. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

#### AIRBUS SERVICE INFORMATION

Service Bulletin	Date
A330-53-3159 .....	September 19, 2007.
A330-53-3160 .....	July 9, 2007.
A330-53-3168 .....	September 19, 2007.
A340-53-4165 .....	September 19, 2007.
A340-53-4172 .....	July 10, 2007.
A340-53-4174 .....	September 19, 2007.

#### FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

#### Differences Between This AD and the MCAI or Service Information

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

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

#### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 26 products of U.S. registry. We also estimate that it would take about 202 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Required

parts would cost about \$19,020 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$914,680, or \$35,180 per product.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

We determined that this 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 this 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.

#### 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 FAA amends § 39.13 by adding the following new AD:

**Airbus:** Docket No. FAA-2008-0667; Directorate Identifier 2008-NM-009-AD.

#### Comments Due Date

(a) We must receive comments by July 24, 2008.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Airbus Model A330-200, A330-300, and A340-300 series airplanes; certificated in any category; all certified models, all serial numbers; on which Airbus modification 44205 has been embodied in production, except those on which Airbus modification 52974 or 53223 has been embodied in production.

#### Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

#### Reason

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

During fatigue tests (EF3) on the A340-600, damages were found in longitudinal doubler at VTP (vertical tail plane) attachment cutout between Frame (FR) 80 and FR86. This damage occurred between 58341 and 72891 simulated Flight Cycles (FC).

Due to the higher Design Service Goal and different design (e.g. doubler thickness) [of the] A330-200/-300 and A340-300 aircraft series, the damage assessment concluded [there was] potential impact on [the airplanes specified in the] applicability.

[T]o allow early detection of cracks, which could [prevent] possible crack propagation and consequently maintain the structural integrity of the upper shell structure between FR80 and FR86, this Airworthiness Directive (AD) mandates an inspection program [for cracking] of this area using a high frequency eddy current (HFEC) method, and a modification to improve the upper shell structure.

The unsafe condition is crack propagation in the VTP attachment cutout, which could reduce airplane structural integrity in the tail section. Corrective actions include doing eddy current inspections for cracking of certain fastener rows, and contacting Airbus for repair instructions and repairing.

#### Actions and Compliance

(f) Unless already done, do the following actions.

(1) For Airbus Model A330-300 and A340-300 series airplanes, except Model A340-300 weight variant (WV) 027 airplanes: At the applicable compliance time specified in paragraph (f)(2) of this AD, perform a HFEC inspection of the upper shell structure between FR80 and FR86, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330-53-3168 or A340-53-4174, both dated September 19, 2007, as applicable.

(i) If no crack is detected, repeat the inspection thereafter within the intervals specified in paragraph 1.E.(2) of Airbus Service Bulletin A330-57-3168 or A340-53-4174, as applicable.

(ii) If any crack is detected during any inspection required by this AD: Before next flight, contact Airbus for repair instructions and do applicable repairs.

(iii) Doing the modification of the upper shell structure in accordance with Airbus Service Bulletin A330-53-3159 or Airbus Service Bulletin A340-53-4165, both dated September 19, 2007, as applicable, ends the inspections required by paragraph (f)(1) of this AD.

(2) Do the actions required by paragraph (f)(1) of this AD at the later of the compliance times specified in paragraph (f)(2)(i) and (f)(2)(ii) of this AD.

(i) Within the compliance times specified in paragraph 1.E.(2) of Airbus Service Bulletin A330-53-3168 or A340-53-4174, both dated September 19, 2007, as applicable.

(ii) Within 3 months after the effective date of this AD.

(3) At the applicable time specified in paragraphs (f)(3)(i), (f)(3)(ii), and (f)(3)(iii) of this AD or within 3 months after the effective date of this AD, whichever occurs later, modify the upper shell structure between FR80 and FR86 (including doing eddy current inspections for cracking of certain fastener rows and applicable corrective actions) in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330-53-3160, dated July 9, 2007, or Airbus Service Bulletin A340-53-4172, dated July 10, 2007, as applicable. Do all applicable corrective actions before further flight.

(i) For Model A330-200 airplanes, WV 020 through WV 027: Prior to the accumulation of 13,500 total flight cycles.

(ii) For Model A330-200 airplanes, WV 050 through WV 055: Prior to the accumulation of 10,700 total flight cycles or 59,300 total flight hours, whichever occurs first.

(iii) For Model A340-300 airplanes, WV 027: Prior to the accumulation of 14,200 total flight cycles.

#### FAA AD Differences

**Note:** This AD differs from the MCAI and/or service information as follows: Although the MCAI allows further flight after cracks are found during compliance with the required action, this AD requires that you repair the crack(s) before further flight.

**Other FAA AD Provisions**

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007-0284, dated November 12, 2007, and the service bulletins specified in Table 1 of this AD, for related information.

TABLE 1.—SERVICE INFORMATION

Airbus Service Bulletin	Date
A330-53-3159 .....	September 19, 2007.
A330-53-3160 .....	July 9, 2007.
A330-53-3168 .....	September 19, 2007.
A340-53-4165 .....	September 19, 2007.
A340-53-4172 .....	July 10, 2007.
A340-53-4174 .....	September 19, 2007.

Issued in Renton, Washington, on June 9, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8-14192 Filed 6-23-08; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-102122-08]

RIN 1545-BH56

**Guidance Under Section 956 for Determining the Basis of Property Acquired in Certain Nonrecognition Transactions**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and the Treasury Department are issuing temporary regulations under section 956 of the Internal Revenue Code (Code) relating to the determination of basis in property acquired by a controlled foreign corporation in certain nonrecognition transactions that are intended to avoid United States income tax. Those regulations affect United States shareholders of a controlled foreign corporation that acquires United States property in certain nonrecognition transactions. The text of those regulations also serves as the text of these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by September 22, 2008.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-102122-08), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-102122-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-102122-08).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, John H. Seibert, (202) 622-3860; concerning submissions of comments and/or requests for a hearing, Regina Johnson, (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background and Explanation of Provisions**

Temporary regulations in the Rules and Regulations section of this issue of

the **Federal Register** provide guidance regarding the determination of basis for property acquired in certain nonrecognition transactions that repatriate earnings and profits of a controlled foreign corporation but are structured with the intent to avoid an income inclusion by the United States shareholders of the controlled foreign corporation under section 951(a)(1)(B). This avoidance is achieved by the use of the basis rules under section 362(a) for the acquisition by the controlled foreign corporation of certain stock or obligations that constitute United States property within the meaning of section 956(c).

The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will affect primarily large multi-national United States corporations that own a significant interest in foreign corporations that acquire certain United States property in a transaction subject to the regulations. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small entities.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department continue to consider, outside the context of section 956, the appropriate basis of stock or obligations issued by a transferor in the hands of the transferee as determined under section 362. The IRS and the Treasury Department are also considering whether any additional rules are necessary or appropriate to coordinate the section 956 basis

determinations under these regulations with basis determinations under other provisions of the Code or regulations. Comments are requested in this regard. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of these regulations is John H. Seibert, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

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

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

**Par. 2.** Section 1.956-1 is amended by adding a sentence to the end of paragraph (e)(1) and adding new paragraphs (e)(5), (e)(6) and (f) to read as follows:

#### § 1.956-1 Shareholder's pro rata share of a controlled foreign corporation's increase in earnings invested in United States property.

\* \* \* \* \*

(e) \* \* \* (1) \* \* \* See § 1.956-1T(e)(6) for a special rule for determining amounts attributable to United States property acquired as the result of certain nonrecognition transactions.

\* \* \*

(e)(5) [The text of the proposed amendment to § 1.956-1(e)(5) is the same as the text for § 1.956-1T(e)(5) published elsewhere in this issue of the **Federal Register**].

(e)(6) [The text of the proposed amendment to § 1.956-1(e)(6) is the same as the text for § 1.956-1T(e)(6) published elsewhere in this issue of the **Federal Register**].

(f) [The text of the proposed amendment to § 1.956-1(f) is the same as the text for § 1.956-1T(f) published

elsewhere in this issue of the **Federal Register**].

**Steven T. Miller,**

*Acting Deputy Commissioner for Services and Enforcement.*

[FR Doc. E8-14170 Filed 6-23-08; 8:45 am]

**BILLING CODE 4830-01-P**

#### DEPARTMENT OF THE INTERIOR

#### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 944

**[SATS No. UT-045-FOR; Docket ID: OSM-2008-0011]**

#### Utah Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; opening of public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of a proposed amendment to the Utah regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). Utah proposes additions and revisions to its rules regarding Division of Oil Gas and Mining ("DOGM" or "Division") requests for additional information required to complete the review of a coal mining permit application, change, or renewal; the casing and sealing of underground openings; the definition of "intermittent stream" and related performance standards. Utah intends to revise its program to clarify Division responsibilities and improve operational efficiency.

**DATES:** We will accept written comments on this amendment until 4 p.m., m.d.t. July 24, 2008. If requested, we will hold a public hearing on the amendment on July 21, 2008. We will accept requests to speak until 4 p.m., m.d.t. on July 9, 2008.

**ADDRESSES:** You may submit comments by any of the following methods:

- **Federal eRulemaking Portal:** [www.regulations.gov](http://www.regulations.gov). The proposed rule has been assigned Docket ID: OSM-2008-0011. If you would like to submit comments through the Federal eRulemaking Portal, go to [www.regulations.gov](http://www.regulations.gov) and do the following. Click on the "Advanced Docket Search" button on the right side of the screen. Type in the Docket ID "OSM-2008-0011" and click the "Submit" button at the bottom of the page. The next screen will display the

Docket Search Results for the rulemaking. If you click on OSM-2008-0011, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.

- **Mail:** James F. Fulton, Chief, Denver Field Division Office of Surface Mining Reclamation and Enforcement, P.O. Box 46667, Denver, CO 80201-6667.

- **Hand Delivery/Courier:** James F. Fulton, Chief, Denver Field Division Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202-5733.

**Instructions:** All submissions received must include the agency name (OSM) and either the Docket ID "OSM-2008-0011" or SATS No. "UT-045-FOR". For detailed instructions on submitting comments and additional information on the rulemaking process, see the "III. Public Comment Procedures" heading under the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** In addition to viewing the docket and obtaining copies of documents at [www.regulations.gov](http://www.regulations.gov), you may review copies of the Utah program, this amendment, a listing of any public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, suite 3320, Denver, CO 80202-5733, **Telephone:** (303) 293-5015, **E-mail:** [jfulton@osmre.gov](mailto:jfulton@osmre.gov).

John R. Baza, Director, Division of Oil, Gas and Mining, 1594 West North Temple, suite 1210, Salt Lake City, UT 84114-5801, **Telephone:** (801) 538-5340, **Internet:** <http://www.ogm.utah.gov>.

**FOR FURTHER INFORMATION CONTACT:** James F. Fulton, **Telephone:** (303) 293-5015, **Internet:** [jfulton@osmre.gov](mailto:jfulton@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Utah Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

#### I. Background on the Utah Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of

surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Utah program on January 21, 1981. You can find background information on the Utah program, including the Secretary’s findings, the disposition of comments, and the conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You can also find later actions concerning Utah’s program and program amendments at 30 CFR 944.15 and 944.30.

## II. Description of the Proposed Amendment

By letter dated May 28, 2008, Utah sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Utah sent the amendment at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

The provisions of the Utah Administrative Rules proposed for revision and addition are: (1) Requests for Additional Information, R645–300–131.300 (addition of new section); (2) Sealing of Underground Openings, R645–301–551, R645–301–631, and R645–301–765; and (3) Intermittent Streams, R645–100–200, R645–301–535.210, R645–301–535.223, R645–301–731.610, R645–301–742.320 through R645–301–742.324 R645–301–742.330 through R645–301–742.333, and R645–301–742.412.

Specifically, Utah proposes to add a provision requiring the Division to issue a written decision and justification if additional information is required to complete the review of a coal mining permit application, change, or renewal. Utah also proposes to expand its rules pertaining to the sealing of underground openings to include additional specifications for sealing drill holes and to reference other regulations which contain more specific guidance. Additionally, Utah proposes to adopt a more hydrologically accurate definition of “intermittent stream”. In order to remain no less effective than Federal regulations, numerous performance standards are proposed for revision due to this proposed definition change.

## III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program

approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Utah program.

### Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

### Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available in the electronic docket for this rulemaking at [www.regulations.gov](http://www.regulations.gov). While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on July 9, 2008. If you are disabled and need reasonable accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. If there is only limited interest in participating at a public hearing, a public meeting or teleconference rather than a hearing may be held. If we hold a public meeting or teleconference, a notice of the event will be posted to the docket for this rulemaking at [www.regulations.gov](http://www.regulations.gov), and a summary of the event will be included in the docket for this rulemaking.

To assist the transcriber and ensure an accurate record, we request, if possible,

that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

## IV. Procedural Determinations

### Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

### Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

### Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

### Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and

reclamation operations be “in accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects 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. The rule does not involve or affect Indian Tribes in any way.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal,

which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- 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 determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 944**

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 5, 2008.

**Allen D. Klein,**

*Regional Director, Western Region.*

[FR Doc. E8-14267 Filed 6-23-08; 8:45 am]

**BILLING CODE 4310-05-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Part 3500**

[WO-320-1330-02-24-1A]

RIN 1004AD91

**Leasing of Solid Minerals Other Than Coal and Oil Shale**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Land Management (BLM) is proposing to amend its regulations in 43 CFR part 3500 for leasing of solid minerals other than coal and oil shale to distinguish fringe acreage lease requirements from lease modification requirements, and to describe acceptable justifications for a lease modification. The proposed rule would also identify changes in the associated procedural requirements and update the filing fees. The proposed changes are based on statutory authorities, which authorize the BLM to issue regulations for leasing of minerals and to charge for administrative processing costs, and on policy guidance from the Office of Management and Budget (OMB) and the Department of the Interior (DOI) requiring the BLM to charge these fees.

**DATES:** Send your comments on this proposed rule to the BLM on or before August 25, 2008. The BLM will not necessarily consider any comments received after the above date in making its decision on the final rule.

**ADDRESSES:** You may mail written comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240, *ATTN:* 1004-AD91; or hand-deliver written comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC 20036. Comments will be available for public review at the L Street address from 7:45 a.m. to 4:15 p.m., Eastern Time, Monday through Friday, except Federal holidays.

*Federal eRulemaking Portal:* <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

George Brown, Geologist, Solid Minerals Division (WO-320), Bureau of Land Management, Mail Stop-501LS, 1849 “C” Street, NW., Washington, DC 20240; or by telephone at (202) 452-7765. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service

(FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

#### SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion of Proposed Rule
- IV. Procedural Matters

#### I. Public Comment Procedures

Please submit e-mail comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: 1004-AD91" and your name and return address in your e-mail message.

You may examine documents pertinent to this proposed rulemaking at the L Street address.

##### A. How Do I Comment on the Notice?

If you wish to comment, you may submit your comments by any one of several methods:

- You may mail comments to Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240, Attn: 1004-AD91.
- You may deliver comments to Room 401, 1620 L Street, NW., Washington, DC 20036.
- You may access and comment on the notice at the Federal eRulemaking Portal by following the instructions at that site (see **ADDRESSES**).

Please make your comments as specific as possible by confining them to issues for which comments are sought in this notice, and explain the bases for your comments.

The comments and recommendations that will be most useful and likely to influence agency decisions are:

1. Those supported by quantitative information or studies; and
2. Those that include citations to, and analyses of, the applicable laws and regulations.

The BLM may not necessarily consider or include in the Administrative Record for the notice comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

##### B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**: Personal or messenger delivery" during regular hours (7:45 a.m. to 4:15 p.m.),

Monday through Friday, except holidays.

##### C. Can My Name and Address Be Kept Confidential?

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

#### II. Background

At the time of leasing, the BLM proposes lease boundaries that conform as nearly as possible to the orientation of known mineral deposits. Due to lack of detailed information about the deposit when a lease is issued, a lease boundary may need refinement. Following leasing, for example, additional exploration by the lessee may identify extensions of the deposit onto adjoining land. In addition, new engineering information may determine that lease boundaries are not situated for optimal development and recovery of the mineral deposit within the lease. In some cases, this has required placing overburden onto lands containing mineral deposits, precluding maximum recovery of the minerals and shortening the operating life of some mines. The BLM uses lease modifications to adjust lease boundaries and make corrections to accommodate new information. These changes are infrequent and typically involve relatively small areas. Current regulations treat fringe acreage leases and lease modifications in the same way, in that in both cases there must be a mineral deposit under the proposed additional acreage to be added to the primary leasehold. It is appropriate that a fringe acreage lease, as a new lease, should be required to show the presence of a mineral deposit within the proposed lease boundaries. By contrast, since a modification is an adjustment to an existing lease that already contains a known mineral deposit, the requirement in the existing regulations for the presence of a mineral deposit in the modification area should not be applicable to adjustment of the existing lease boundary. Therefore, the proposed rule would amend this provision with regard to lease modifications.

The proposed rule also incorporates an update to the filing fee for lease modification and fringe acreage lease applications based on cost recovery

rules published in the **Federal Register** on October 7, 2005 (70 FR 58857).

#### III. Discussion of Proposed Rule

The BLM is proposing to amend the regulation that requires that the acreage proposed to be added to an existing lease in a lease modification application contain an extension of the mineral deposit. The amendment acknowledges that an existing lease already contains a known deposit, and provides for modification where the configuration of the lease boundary has been found to be inadequate for recovery of the previously leased mineral deposit. Under circumstances where there is no known deposit of the same mineral on the additional acreage, the proposed rule would require that the acreage to be added is necessary to achieve recovery of the mineral deposit on the pre-existing Federal lease and, had the acreage been included in the Federal lease at the time of the Federal lease's issuance, such inclusion would have produced a reasonably compact lease. This is in accordance with the Mineral Leasing Act of February 25, 1920, as amended, which requires such compactness. In substance, the proposed rule recognizes that, since the additional acreage could have been included at the time of lease issuance even though it did not contain a known mineral deposit, it may now be included as a modification to the pre-existing lease. This change provides for making adjustments to reconfigure lease boundaries for better accommodation of development based on new information on the location and orientation of deposits and extraction areas. This approach provides potential cost savings to lessees and increased returns to the United States from maximum recovery of leased mineral deposits. This is a minor change in the regulations that would apply in limited circumstances. The BLM consulted with the Forest Service in the development of the proposed rule.

The principal reason for this amendment is to facilitate the process of allowing a modification to add acreage to a lease. Under the proposed rule, the BLM would allow a lease modification:

- (1) To recognize new information about the extent of the deposit to avoid bypassing reserves that could not be independently developed;
- (2) To provide space for placement of overburden and other waste rock materials to facilitate maximum recovery of the mineral deposit; and/or
- (3) To provide space for other facilities needed to recover the deposit, including ore stockpiles, topsoil stockpiles, haul and/or access roads,

and support facilities such as warehouse and storage areas, shops, fuel and lubricant storage, equipment staging areas, electrical substations, repair shops, and restrooms.

All leases necessarily include some nonmineral acreage. Lease boundaries are based on the location of deposits that may not be fully identified at the time of lease issuance. Items (2) and (3) already take place on existing leases but can be constrained because the lease orientation and lease boundaries may not be optimally oriented to the deposits to provide space for these activities. For example, due to the space limitations caused by orientation of the deposit relative to the lease boundary, it may be necessary to temporarily stockpile ore on an unmined portion of a deposit. This interferes with mining efficiency and increases costs. It blocks access to the deposit, reduces recovery, and requires handling and hauling the stockpile multiple times as the deposit is mined. Readjustment of the lease boundary to better conform to the deposit orientation could provide for better utilization of the lease acreage for the overall mine operation.

Subpart 3516 provides for use permits for ancillary operations for phosphate leases (up to 80 acres) and sodium leases (up to 40 acres). Use permits are not appropriate for several reasons. Lease boundary readjustment provides for more efficient utilization of leased acreage and more space in the area of the greatest need immediately adjacent to the operations. Readjustment can provide more space for operations in a compact configuration than a use permit by making more effective use of the acres that are leased and minimizing the additional acres needed. Use permits may not provide enough acreage for all lease operations. Also, BLM use permit provisions are limited to public lands and do not apply to national forest lands.

#### IV. Procedural Matters

##### 1. Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order (E.O.) 12866. We have made the assessments required by E.O. 12866 and the results appear below.

- The rule will not 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. Mining

companies rarely seek lease modifications. From FY2001 through FY2006, there were only 9 lease modifications out of 522 active leases. This regulation change is not expected to result in a substantial increase in the number of modifications. Although the BLM expects few modifications, the likely economic impacts from an individual lease modification can be illustrated in the following example. In one recent lease modification, one company employed about 210 workers with annual wages of about \$18.7 million. The modification extended the mine's life by 2 to 3 years, thereby extending the wage earnings for those 210 workers, and producing an additional \$4 to 6 million in royalties for the Federal Government.

- The rule will not create a serious inconsistency with an action taken or planned by another agency. It will be consistent with the current practices of the BLM and the Forest Service for operations on leases, which provide for consultation between the agencies before the BLM authorizes a lease modification, and will extend those practices to the additional lands in modified leases. It will not change the relationships of the BLM to other agencies and their actions. The proposed rule will allow a lease modification to increase the size or shape of the lease, providing more acreage for lease operations. Procedures for review and approval of all lease operations, including mining and reclamation plans, development of mitigation measures, and the associated reviews under the National Environmental Policy Act, will remain the same. Potential activities on the leases will remain the same. The effect of this rule is merely to provide more acreage to perform those operations on existing leases.

- The rule will not materially affect entitlements, grants, loan programs, or the rights and obligations of their recipients. The rule does not address any of these programs.

- The rule will not raise novel legal or policy issues.

##### 2. Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Although a substantial number of lessees meet the criteria for small entities, as defined by the Small Business Administration (SBA), the proposed rule would only affect a small number of entities and the annual effect on the economy of the regulatory changes will be less than

\$100 million. When it is applied, the proposed rule will have a beneficial impact because it allows the lessee to develop the lease more fully, and do so with greater efficiency and potentially at lower cost. A threshold analysis was performed, which determined that a Regulatory Flexibility Analysis is not required. The threshold analysis is available at the address specified under **ADDRESSES**. A Small Entity Compliance Guide is not required.

For the purposes of this section a "small entity" is an individual, limited partnership, or small company, at "arm's length" from the control of any parent companies, with fewer than 500 employees. This definition accords with Small Business Administration regulations at 13 CFR 121.201.

##### 3. 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.

- This rule will not 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. As explained above, lease modifications constitute a small part of solid non-energy mineral leasing activity and most of those are accomplished under existing regulations. The proposed rule is only expected to involve boundary adjustments at a few leases, and the associated economic effects:

- Will be less than \$100 million annually;
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and
- Will 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.
- The rule will not materially affect entitlements, grants, loan programs, or the rights and obligations of their recipients. The rule does not address any of these programs.

##### 4. Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year. The rule will not have a significant or unique effect on state, local, or tribal governments or the private sector. The changes proposed in this rule would not



require anything of any non-federal governmental entity. The rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

*5. Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings) (E.O. 12630)*

Under the criteria in E.O.12630, this rule does not have takings implications. This rule does not substantially change BLM policy. Nothing in this rule has any effect on private property interests, and therefore nothing in the rule constitutes a taking. A takings implication assessment is not required.

*6. Federalism (E.O. 13132)*

Under the criteria in Executive Order 13132, this rule does not have significant Federalism effects to warrant the preparation of a Federalism assessment. This rule does not change the role of or responsibilities among Federal, state, and local governmental entities, nor does it relate to the structure and role of states or have direct, substantive, or significant effects on states.

*7. Civil Justice Reform (E.O. 12988)*

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(1) Does not unduly burden the judicial system, and

(2) Meets the criteria of sections 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(3) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

*8. Consultation With Indian Tribes (E.O. 13175)*

Under the criteria in E.O. 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. Because this rule does not make significant substantive changes in the regulations and does not specifically involve Indian reservation lands, we believe that relations with Indians, Indian tribes, and tribal governments will be unaffected and no consultation is needed for this rule. Consultation would take place for any lease modifications that may be proposed. Lands within Indian Reservations, except the Uintah and Ouray Indian Reservation, Hillcreek Extension, State of Utah, are closed to the operation of the Mineral Leasing Act. Under Public

Law 440 (Hill Creek Extension), the boundaries of the Uintah-Ouray Reservation were extended to include the surface of some public domain lands, but those lands do not contain any known mineral resources or leasing operations that are subject to these regulations and are unaffected by this change.

*9. Paperwork Reduction Act*

The BLM has determined that this proposed rule does not contain any new information collection requirements that the Office of Management and Budget (OMB) must approve under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The OMB has approved the information collection requirements in the regulations under OMB control number 1004-0073, which expires March 31, 2010.

*10. National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), is not required.

The BLM has determined that any environmental effects that this proposed rule may have are too broad, speculative, or conjectural to lend themselves to meaningful analysis and any actions authorized by the rule would be subject to the NEPA process on a case-by-case basis. See 516 DM2, Appendix I, Item 1.10. In limited circumstances, this regulation will provide a limited amount of acreage within the lease boundary for operations to take place. The factual situation at each lease area is different. Specific proposals for modifications will be reviewed under NEPA and evaluated to identify the potential impacts associated with the proposed modifications and any appropriate mitigation, and the decisions about what operations will be allowed will be made on the basis of those analyses.

Therefore, the proposed rule is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM) 2.3A and 516 DM 2, Appendix I, Item 1.10, and does not meet any of the 10 criteria for exceptions to categorical exclusion listed in 516 DM 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusion" means a category of actions

that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required.

Because the proposed promulgation of this rule would not itself approve any lease modification, it would have no significant impacts on the environment and would not have a significant impact on any of the following critical elements of the human environment as defined in Appendix 5 of the BLM National Environmental Policy Act Handbook (H-1790-1): air quality, areas of critical environmental concern, cultural resources, Native American religious concerns, threatened or endangered species, hazardous or solid waste, water quality, prime and unique farmlands, wetlands, riparian zones, wild and scenic rivers, environmental justice, and wilderness. The lease modifications that are authorized would be analyzed in EAs or EISs, and, if approved, they would incorporate site specific mitigation measures in both the modification approval and the mining/reclamation plan. This proposed rule does not change this, but makes it clear that, in certain circumstances, proponents of lease modifications do not bear the burden of showing that the land contains deposits of the minerals subject to the lease.

*11. Data Quality Act*

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (section 515 of Pub. L. 106-554).

*12. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)*

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required. It will not have an adverse effect on energy supplies. The proposed rule would reduce energy requirements somewhat by facilitating efforts by lessees to keep operations compact. Thus, transportation required for materials within the mining operation may be reduced, given that operations would be conducted on adjacently located properties. Accordingly, we anticipate that this may reduce fuel consumption from haulage during operations. By facilitating maximum recovery of mineral deposits from leases, the proposed rule would extend mine life, allowing the existing infrastructure to be used for a longer

time. Postponing development of the new infrastructure required for new mines would also reduce overall energy requirements.

### 13. Clarity of the Regulations

We are required by E.O. 12866 and E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments by one of the methods specified in the **ADDRESSES** section. To better help us amend the regulations, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

### 14. Facilitation of Cooperative Conservation (E.O. 13352)

In accordance with Executive Order 13352, the BLM has determined that this proposed rule:

- Would not impede facilitating cooperative conservation;
- Would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources;
- Would properly accommodate local participation in the Federal decision-making process; and
- Would provide that the programs, projects, and activities are consistent with protecting public health and safety.

Author

The principal author of this rule is George Brown, Geologist, Division of Solid Minerals, assisted by Ted Hudson, Acting Chief, Division of Regulatory Affairs, Washington Office, BLM.

### List of Subjects in 43 CFR Part 3500

Government contracts, Intergovernmental relations, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: March 25, 2008.

**C. Stephen Allred,**

*Assistant Secretary, Land and Minerals Management.*

Accordingly, for the reasons stated in the preamble and under the authorities stated below, the BLM proposes to amend 43 CFR part 3500 as set forth below.

### PART 3500—LEASING OF SOLID MINERALS OTHER THAN COAL AND OIL SHALE

1. The authority citation for part 3500 continues to read as follows:

**Authority:** 5 U.S.C. 552; 30 U.S.C. 189 and 192c; 43 U.S.C. 1733 and 1740; and sec. 402, Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix).

#### Subpart 3501—Leasing of Solid Minerals Other Than Coal and Oil Shale—General

2. Amend § 3501.10 by revising paragraph (f) to read as follows:

##### § 3501.10 What types of mineral use authorizations can I get under these rules?

\* \* \* \* \*

(f) “Lease modifications” add adjacent acreage to a Federal lease. The acreage to be added:

- (1) Contains known deposits of the same mineral that can be mined only as part of the mining operation on the original Federal lease; or
- (2) Has the following characteristics—
  - (i) Does not contain known deposits of the same mineral; and
  - (ii) Will be used for surface activities that are necessary in furtherance of recovery of the mineral deposit on the original Federal lease; and
  - (iii) Had the acreage been included in the original Federal lease at the time of the Federal lease’s issuance, the original Federal lease would have been reasonably compact.

\* \* \* \* \*

3. Amend § 3510.12 by revising paragraphs (b) and (c), and by adding paragraph (d), to read as follows:

##### § 3510.12 What must I do to obtain a lease modification or fringe acreage lease?

\* \* \* \* \*

(b) Include a non-refundable filing fee as provided in § 3000.12, Table 1, of this chapter (the fee may be found under “Leasing of Solid Minerals Other Than Coal and Oil Shale (Part 3500)”). You must also make an advance rental payment in accordance with the rental rate for the mineral commodity you are seeking. If you want to modify an existing lease, the BLM will base the rental payment on the rate in effect for the lease being modified in accordance with § 3504.15.

(c) Your fringe acreage lease application must:

(1) Show the serial number of the lease if the lands specified in your application adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Show that the mineral deposit specified in your application extends from your adjoining lease or from adjoining private lands you own or control; and

(4) Include proof that you own or control the mineral deposit in the adjoining lands if they are not under a Federal lease.

(d) Your lease modification application must:

(1) Show the serial number of your Federal lease that you seek to modify;

(2) Contain a complete and accurate description of the lands desired that adjoin the Federal lease you seek to modify; and

(3) Show that—

(i) The adjoining acreage to be added contains known deposits of the same mineral deposit that can be mined only as part of the mining operations on the original Federal lease; or

(ii) As an alternative, show that—

(A) The acreage to be added does not contain known deposits of the same mineral deposit; and

(B) The adjoining acreage will be used for surface activities that are necessary for the recovery of the mineral deposit on the original Federal lease, and

(C) Had the acreage been included in the original Federal lease at the time of that lease’s issuance, the original Federal lease would have been reasonably compact.

4. Amend § 3510.15 by revising paragraph (e), redesignating paragraphs (f) and (g) as paragraphs (g) and (h), respectively, by adding new paragraph (f), and by revising redesignated paragraph (h), to read as follows:

##### § 3510.15 What will the BLM do with my application?

\* \* \* \* \*

(e) The lands for which you applied for a fringe acreage lease lack sufficient reserves of the mineral resource to warrant independent development;

(f)(1) The lands for which you applied for a lease modification contain known deposits of the same mineral deposit that can be mined only as part of the mining operations on the original Federal lease; or

(2)(i) The acreage to be added does not contain known deposits of the same mineral; and

(ii) The acreage to be added will be used for surface activities that are

necessary for the recovery of the mineral deposit on the original Federal lease; and

(iii) Had the acreage added by the modification been included in the original Federal lease at the time of that lease's issuance, the original Federal lease would have been reasonably compact

\* \* \* \* \*

(h) You meet the qualification requirements for holding a lease described in subpart 3502 of this chapter and the new or modified lease will not cause you to exceed the acreage limitations described in § 3503.37.

[FR Doc. E8-14214 Filed 6-23-08; 8:45 am]

BILLING CODE 4310-84-P

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 542 and 552

[GSAR Case 2008-G512; Docket 2008-0007; Sequence 8]

RIN 3090-A159

### General Services Acquisition Regulation; GSAR Case 2008-G512; Rewrite of GSAR Part 542; Contract Administration and Audit Services

**AGENCY:** Office of the Chief Acquisition Officer, General Services Administration (GSA).

**ACTION:** Proposed rule.

**SUMMARY:** The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to revise language pertaining to requirements for contract administration and audit services.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat on or before August 25, 2008 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by GSAR Case 2008-G512 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "GSAR Case 2008-G512" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with GSAR Case 2008-G512. Follow the instructions provided to complete the "Public Comment and Submission Form". Please include your name, company name (if any), and "GSAR Case 2008-G512" on your attached document.

- Fax: 202-501-4067.

- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

*Instructions:* Please submit comments only and cite GSAR Case 2008-G512 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Jeritta Parnell at (202) 501-4082, or by e-mail at [Jeritta.Parnell@gsa.gov](mailto:Jeritta.Parnell@gsa.gov). For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite GSAR Case 2008-G512.

### SUPPLEMENTARY INFORMATION:

#### A. Background

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to update the text addressing GSAR 542.1107, Production Surveillance and Reporting, Subpart 542.15, Contractor Performance Information, and the GSAR clause at 552.242-70, Status Report of Orders and Shipments. This proposed rule is a result of the General Services Administration Acquisition Manual (GSAM) rewrite initiative. The initiative was undertaken by GSA to revise the GSAM so as to maintain consistency with the FAR and implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can use when entering into and administering contractual relationships. The GSAM incorporates the General Services Administration Acquisition Regulation (GSAR) as well as internal agency acquisition policy.

GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, GSA will publish it in the **Federal Register**.

This proposed rule covers the rewrite of GSAR Part 542. The proposed rule revises GSAM Part 542 to update the text addressing GSAR Subpart 542.1107, Production Surveillance and Reporting, Subpart 542.15, Contractor Performance Information, and the GSAR clause at 552.242-70, Status Report of Orders and Shipments. The language in the contract clause at 542.1107, is revised to add emphasis to the contracting officer's responsibilities. The GSAR clause at 552.242-70, Status Report of Orders and

Shipments, is revised to update information about the cited GSA office. The language in GSAR Subpart 542.15, Contractor Performance Information, is reorganized and removed from inclusion in the GSAR. This is guidance to contracting officers, and not requirements for contractors.

### Discussion of Comments

There were two public comments received in response to the Advanced Notice of Proposed Rulemaking. One commenter requested that specific GSA guidelines be applied to the timeframe for novation and name changes by the contracting officer. The Agency did not agree. This suggestion is not necessary. The Agency believes that the FAR coverage is detailed enough to cover all aspects of novation and name changes. The language provided in the GSAM is guidance for contracting officers, and not requirements for contractors. The second commenter stated that the FAR is substantially more specific than the GSAM. The Agency agrees. The GSAM only supplements the FAR.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### B. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive. The revisions only update and reorganize existing coverage. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR Parts 542 and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR case 2008-G512), in correspondence.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the proposed rule contains information collection requirements. However, the proposed changes to the GSAR do not impose additional information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* to the

paperwork burden previously approved under OMB Control Number 3090-0027.

#### List of Subjects in 48 CFR Parts 542 and 552

Government procurement.

Dated: June 18, 2008.

**Al Matera,**

*Director, Office of Acquisition Policy.*

Therefore, GSA proposes to amend 48 CFR parts 542 and 552 as set forth below:

1. The authority citation for 48 CFR parts 542 and 552 revised to read as follows:

**Authority:** 40 U.S.C. 121(c).

#### **PART 542—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

2. Revise section 542.1107 to read as follows:

##### **542.1107 Contract clause.**

The contracting officer shall insert 552.242-70, Status Report of Orders and Shipments, in solicitations and indefinite quantity and requirements contracts for Stock or Special Order Program items. The clause may be used in indefinite delivery definite quantity contracts for Stock or Special Order Program items when close monitoring is necessary because numerous shipments are involved.

##### **542.1503-71 [Removed]**

3. Remove section 542.1503-71.

#### **PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. Amend section 552.242-70 by—
- Revising the date of the clause;
  - Removing from paragraph (a) “FQC” and adding “QVOC” in its place, respectively; and
  - Revising paragraph (b).

The revised text reads as follows:

##### **552.242-70 Status Report of Orders and Shipments.**

\* \* \* \* \*  
STATUS REPORT OF ORDERS AND  
SHIPMENTS (DATE)  
\* \* \* \* \*

(b) A copy of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be reproduced by the Contractor.

(End of clause)

[FR Doc. E8-14224 Filed 6-23-08; 8:45 am]

**BILLING CODE 6820-61-S**

#### **GENERAL SERVICES ADMINISTRATION**

#### **48 CFR Parts 543 and 552**

[**GSAR Case 2008-G513; Docket 2008-0007; Sequence 10**]

**RIN 3090-AI55**

#### **General Services Acquisition Regulation; GSAR Case 2008-G513; Rewrite of Part 543, Contract Modifications**

**AGENCY:** Office of the Chief Acquisition Officer, General Services Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to revise GSAM language pertaining to requirements for contract modifications.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat on or before August 25, 2008 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by GSAR Case 2008-G513 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “GSAR Case 2008-G513” under the heading “Comment or Submission.” Select the link “Send a Comment or Submission” that corresponds with GSAR Case 2008-G513. Follow the instructions provided to complete the “Public Comment and Submission Form.” Please include your name, company name (if any), and “GSAR Case 2008-G513” on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat Division (VPR), 1800 F Street, NW, Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

**Instructions:** Please submit comments only and cite GSAR Case 2008-G513 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification regarding content, please contact Ms. Jeritta Parnell at (202) 501-4082. For information pertaining to the status or publication schedules, please contact the Regulatory Secretariat Division (VPR), Room 4041, GS Building, Washington, DC 20405, (202)

501-4755. Please cite GSAR Case 2008-G513.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

The GSA is amending the General Services Administration Acquisition Regulation (GSAR) to revise the prescriptions for clauses included in 543.205, Contract clauses. The associated clauses located in 552.243 are amended to delete the clause at 552.243-70, Pricing of Adjustments, to revise the clause at 552.243-71, Equitable Adjustments, and to relocate the clause at 552.243-72, Modifications (Multiple Award Schedule) to GSAR 552.238.

This proposed rule is a result of the General Services Administration Acquisition Manual (GSAM) rewrite initiative. The initiative was undertaken by GSA to revise the GSAM so as to maintain consistency with the Federal Acquisition Regulation (FAR) and implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can use when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

The GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, GSA will publish it in the **Federal Register**.

This proposed rule revises GSAR 543.205, Contract clauses, and associated clauses in GSAR 552.243. The information in GSAR 543.205, Contract clauses, is revised to remove 543.205(a)(1) and 543.205(b) and renumbered accordingly. The information in 543.205(a)(1) is deleted. This clause prescription is no longer necessary. The information in 543.205(b) is relocated to Part 538. The prescription for the clause at 552.243-71, Equitable Adjustment, is revised to include the clause title for FAR 52.243-4, Changes. The clause at 552.243-70, Pricing of Adjustments, is deleted. Information formerly contained in this clause is now contained in the revised clause at 552.243-71, Equitable Adjustments. The clause at 552.243-71, Equitable Adjustments, is revised to clarify costs, overhead, profit, and proposal preparation costs. The clause at 552.243-72, Modifications, (Multiple Award Schedule) is relocated to GSAR Part 538.

##### **Discussion of Comments**

There were three public comments received in response to the “Advanced Notice of Proposed Rulemaking.” One commenter requested that the “Overhead, Profit, and Commission”

section needed to be "reworded to be clearer about the breakdown and distinctions between Subcontractor and Prime Commission, and Overhead and Profit, and the maximum allowable amounts for each." The Agency agreed and the clause at 552.243-71, Equitable Adjustments, was revised to reflect this suggested change. The second commenter recommended that the "Changes" clause should be applicable to orders. The GSAM was never intended to be a stand-alone document; it merely supplements the FAR. The term "order" is defined in FAR 2.101, and therefore, should not be repeated in the GSAM. The third commenter recommended that GSA reconsider the timing of solicitation refreshes and associated modifications to existing contract terms and conditions. This issue will be addressed in the rewrite of GSAR Part 538.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## B. Regulatory Flexibility Act

The GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive. The revisions only update, clarify, and reorganize existing coverage. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The GSA will consider comments from small entities concerning the affected GSAR Part 543 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR case 2008-G513), in all correspondence.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the GSAM do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

## List of Subjects in 48 CFR Parts 543 and 552

Government procurement.

Dated: June 13, 2008

**Al Matera,**

*Director, Office of Acquisition Policy.*

Therefore, GSA proposes to amend 48 CFR parts 543 and 552 as set forth below:

1. The authority citation for 48 CFR parts 543 and 552 continues to read as follows:

**Authority:** 40 U.S.C. 121(c).

### PART 543—CONTRACT MODIFICATIONS

2. Revise section 543.205 to read as follows:

#### 543.205 Contract clauses.

The contracting officer shall insert 552.243-71, Equitable Adjustments, in solicitations and contracts containing FAR 52.243-4, Changes.

### PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 552.243-70 [Removed]

3. Remove section 552.243-70.  
4. Revise section 552.243-71 to read as follows:

#### 552.243-71 Equitable Adjustments.

As prescribed in 543.205, insert the following clause:

#### EQUITABLE ADJUSTMENTS (DATE)

(a) This clause governs the determination of equitable adjustments to which the Contractor may be entitled under the "Changes" clause prescribed by FAR 52.243-4, the "Differing Site Conditions" clause prescribed by FAR 52.236-2, and any other provision of this contract allowing entitlement to an equitable adjustment. This clause does not govern determination of the Contractor's relief allowable under the "Suspension of Work" clause prescribed by FAR 52.242-14.

(b) At the written request of the Contracting Officer, the Contractor shall submit a proposal, in accordance with the requirements set forth herein, for an equitable adjustment to the contract for changes or other conditions that may entitle a Contractor to an equitable adjustment. If the Contractor deems an oral or written order to be a change to the contract, it shall promptly submit to the Contracting Officer a proposal for equitable adjustment attributable to such deemed change. The change shall also conform to the requirements set forth herein.

(c) The proposal shall be submitted within the time specified in the "Changes" clause, or such other time as may reasonably be required by the Contracting Officer. In the case of a proposal submitted based on the "Differing Site Conditions" clause, the notice requirement of that clause shall be met.

(d) Proposals for equitable adjustments, including no costs requests for adjustment of the contract's required completion date, shall include a detailed breakdown of the following elements, as applicable:

- (1) Direct Costs.
- (2) Markups.
- (3) Change to the time for completion specified in the contract.

(e) *Direct Costs.* The Contractor shall separately identify each item of deleted and added work associated with the change or other condition giving rise to entitlement to an equitable adjustment, including increases or decreases to unchanged work. For each item of work so identified, the Contractor shall propose for itself and, if applicable, its first two tiers of subcontractors, the following direct costs:

(1) Material cost broken down by trade, supplier, material description, quantity of material units, and unit cost (including all manufacturing burden associated with material fabrication and cost of delivery to site, unless separately itemized).

(2) Labor cost broken down by trade, employer, occupation, quantity of labor hours, and burdened hourly labor rate, together with itemization of applied labor burdens (exclusive of employer's overhead, profit, and any labor cost burdens carried in employer's overhead rate).

(3) Cost of equipment required to perform the work, identified with material to be placed or operation to be performed.

(4) Cost of preparation and/or revision to shop drawings and other submittals with detail set forth in paragraphs (e)(1) and (e)(2) of this clause.

(5) Delivery costs, if not included in material unit costs.

(6) Time-related costs not separately identified as direct costs, and not included in the Contractor's or subcontractors' overhead rates, as specified in paragraph (g).

(7) Other direct costs.

(f) Marked-up costs of subcontractors below the second tier may be treated as other direct costs of a second tier subcontractor, unless the Contracting Officer requires a detailed breakdown under paragraph (i) of this clause.

(g) *Extensions of time and time-related costs.* The Contractor shall propose a daily rate for each firm's time-related costs during the affected period, and, for each firm, the increase or decrease in the number of work days of performance attributable to the change or other condition giving rise to entitlement to an equitable adjustment, with supporting analysis. Entitlement to time and time-related costs shall be determined as follows:

(1) Increases or decreases to a firm's time-related costs shall be allowed only if such increase or decrease necessarily and exclusively results from the change or other condition giving rise to entitlement to an equitable adjustment.

(2) The Contractor shall not be entitled to an extension of time or recovery of its own time-related costs except to the extent that such change or other condition necessarily and exclusively causes its duration of performance to extend beyond the completion date specified in the contract.

(3) Costs may be characterized as time-related costs only if they are incurred solely to support performance of this contract and the increase or decrease in such costs is solely dependent upon the duration of a firm's performance of work.

(4) Costs may not be characterized as time-related costs if they are included in the calculation of a firm's overhead rate.

(5) Equitable adjustment of time and time-related costs shall not be allowed unless the analysis supporting the proposal complies with provisions specified elsewhere in this contract regarding the Contractor's project schedule.

(h) *Markups*. For each firm whose direct costs are separately identified in the proposal, the Contractor shall propose an overhead rate, profit rate, and where applicable, a bond rate and insurance rate. Markups shall be determined and applied as follows:

(1) Overhead rates shall be negotiated, and may be subject to audit and adjustment.

(2) Profit rates shall be negotiated, but shall not exceed ten percent, unless entitlement to a higher rate of profit may be demonstrated.

(3) The Contractor and its subcontractors shall not be allowed overhead or profit on the overhead or profit received by a subcontractor, except to the extent that the subcontractor's costs are properly included in other direct costs as specified in paragraph (f) of this clause.

(4) Overhead rates shall be applied to the direct costs of work performed by a firm, and shall not be allowed on the direct costs of work performed by a subcontractor to that firm at any tier except as set forth in paragraphs (h)(6) and (h)(7) of this clause.

(5) Profit rates shall be applied to the sum of a firm's direct costs and the overhead allowed on the direct costs of work performed by that firm.

(6) Overhead and profit shall be allowed on the direct costs of work performed by a subcontractor within two tiers of a firm at rates equal to only fifty percent of the overhead and profit rates negotiated pursuant to paragraphs (h)(1) and (h)(2) of this clause for that firm, but not in excess of ten percent when combined.

(7) Overhead and profit shall not be allowed on the direct costs of a subcontractor more than two tiers below the firm claiming overhead and profit for subcontractor direct costs.

(8) If changes to a Contractor's or subcontractor's bond or insurance premiums are computed as a percentage of the gross change in contract value, markups for bond and insurance shall be applied after all overhead and profit is applied. Bond and insurance rates shall not be applied if the associated costs are included in the calculation of a firm's overhead rate.

(9) No markup shall be applied to a firm's costs other than those specified herein.

(i) At the request of the Contracting Officer, the Contractor shall provide such other information as may be reasonably necessary to allow evaluation of the proposal. If the proposal includes significant costs incurred by a subcontractor below the second tier, the Contracting Officer may require the same detail for those costs as required for the first two tiers of subcontractors, and markups shall be applied to these subcontractor costs in accordance with paragraph (h) of this clause.

(j) *Proposal preparation costs*. If performed by the firm claiming them, proposal

preparations costs shall be included in the labor hours proposed as direct costs. If performed by an outside consultant or law firm, proposal preparation costs shall be treated as other direct costs to the firm incurring them. Requests for proposal preparation costs shall include the following:

(1) A copy of the contract or other documentation identifying the consultant or firm, the scope of the services performed, the manner in which the consultant or firm was to be compensated, and if compensation was paid on an hourly basis, the fully burdened and marked-up hourly rates for the services provided.

(2) If compensation were paid on an hourly basis, documentation of the quantity of hours worked, including descriptions of the activities for which the hours were billed, and applicable rates.

(3) Written proof of payment of the costs requested. The sufficiency of the proof shall be determined by the Contracting Officer.

(k) Proposal preparation costs shall be allowed only if—

(1) The nature and complexity of the change or other condition giving rise to entitlement to an equitable adjustment warrants estimating, scheduling, or other effort not reasonably foreseeable at the time of contract award;

(2) Proposed costs are not included in a firm's time-related costs or overhead rate; and

(3) Proposed costs were incurred prior to a Contracting Officer's unilateral determination of an equitable adjustment under the conditions set forth in paragraph (o) of this clause, or were incurred prior to the time the request for equitable adjustment otherwise became a matter in dispute.

(l) Proposed direct costs, markups, and proposal preparation costs shall be allowable in the determination of an equitable adjustment only if they are reasonable and otherwise consistent with the contract cost principles and procedures set forth in Part 31 of the Federal Acquisition Regulation (48 CFR part 31) in effect on the date of this contract. Characterization of costs as direct costs, time-related costs, or overhead costs must be consistent with the requesting firm's accounting practices on other work under this contract and other contracts.

(m) If the Contracting Officer determines that it is in the Government's interest that the Contractor proceed with a change before negotiation of an equitable adjustment is completed, the Contracting Officer may order the Contractor to proceed on the basis of a unilateral modification to the contract increasing or decreasing the contract price by an amount to be determined later. Such increase or decrease shall not exceed the increase or decrease proposed by the Contractor.

(n) If the parties cannot agree to an equitable adjustment, the Contracting Officer may determine the equitable adjustment unilaterally.

(o) The Contractor shall not be entitled to any proposal preparation costs incurred subsequent to the date of a unilateral determination or denial of the request if the Contracting Officer issues a unilateral determination or denial under any of the following circumstances:

(1) The Contractor fails to submit a proposal within the time required by this contract or such time as may reasonably be required by the Contracting Officer.

(2) The Contractor fails to submit additional information requested by the Contracting Officer within the time reasonably required.

(3) Agreement to an equitable adjustment cannot be reached within 60 days of submission of the Contractor's proposal or receipt of additional requested information, despite the Contracting Officer's diligent efforts to negotiate the equitable adjustment. (End of clause)

#### 552.243-72 [Removed]

5. Remove section 552.243-72.

[FR Doc. E8-14253 Filed 6-23-08; 8:45 am]

BILLING CODE 6820-61-S

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 580

[Docket No. NHTSA-2008-0116; Notice 1]

#### Petition for Approval of Alternate Odometer Disclosure Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Proposed rule; notice of initial determination.

**SUMMARY:** The Commonwealth of Virginia has petitioned for approval of alternate requirements governing certain aspects of the Federal odometer law. NHTSA has initially determined that Virginia's proposed alternate requirements are generally consistent with the purposes of the applicable portion of the federal odometer disclosure law. Accordingly, NHTSA preliminarily grants Virginia's petition. This is not a final agency action.

**DATES:** Comments are due no later than July 24, 2008.

**ADDRESSES:** You may submit comments [identified by DOT Docket ID Number NHTSA-2008-0116] by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- Fax: 202-493-2251.

**Instructions:** For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

**Privacy Act:** Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketInfo.dot.gov>.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** Andrew DiMarsico, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202-366-5263) (Fax: 202-366-3820).

#### **SUPPLEMENTARY INFORMATION:**

### **I. Statutory Background**

#### *A. The Cost Savings Act*

In 1972, Congress enacted the Motor Vehicle Information and Cost Savings Act (Cost Savings Act), among other things, to protect purchasers of motor vehicles from odometer fraud. See Public Law 92-513, 86 Stat. 947, 961-63 (1972).

To assist purchasers to know the true mileage of a motor vehicle, Section 408 of the Cost Savings Act required the transferor of a motor vehicle to provide written disclosure to the transferee in connection with the transfer of ownership of the vehicle. See Public Law 92-513, § 408, 86 Stat. 947 (1972). Section 408 required the Secretary to issue rules requiring the transferor to give a written disclosure to the transferee in connection with the transfer of the vehicle. 86 Stat. 962-63. The written disclosure was to include the cumulative mileage on the odometer and, as the case may be that the actual mileage is unknown, if the odometer reading is known to be different from the number of miles the vehicle actually traveled. Section 408 stated that the

Secretary was to prescribe rules requiring any transferor to provide written disclosures to the transferee in connection with the transfer of ownership of a motor vehicle. *Id.* The disclosures were to include the cumulative mileage registered on the odometer, or disclose that the actual mileage is unknown, if the odometer reading is known to the transferor to be different from the number of miles the vehicle has actually traveled. The rules were to prescribe the manner in which information shall be disclosed under this section and in which such information shall be retained. *Id.* Section 408 further stated that it shall be a violation for any transferor to violate any rules under this section or to knowingly give a false statement to a transferee in making any disclosure required by such rules. *Id.*

*Id.* The Cost Savings Act also prohibited disconnecting, resetting, or altering motor vehicle odometers. *Id.* The statute subjected violators to civil and criminal penalties and provided for Federal injunctive relief, State enforcement, and a private right of action.<sup>1</sup>

There were shortcomings in the odometer provisions of the Cost Savings Act. Among others, in some states, the odometer disclosure statement was not on the title; it was a separate document that could easily be altered or discarded and did not travel with the title. Consequently, it did not effectively provide information to purchasers about the vehicle's mileage or substantially curb odometer fraud. In some states, the title was not on tamper-proof paper. The problems were compounded by title washing thought states with ineffective controls. In addition, there were considerable misstatements of mileage on vehicles that had formerly been leased vehicles, as well as on used vehicles sold at wholesale auctions.

#### *B. The Truth in Mileage Act*

In 1986, Congress enacted the Truth in Mileage Act (TIMA), which added provisions to the Cost Savings Act. See Public Law 99-579, 100 Stat. 3309 (1986). The TIMA amendments

<sup>1</sup>In 1976, Congress amended the odometer disclosure provisions in the Cost Savings Act to provide further protections to purchasers from unscrupulous car dealers. See Public Law 94-364, 90 Stat. 981 (1976). It amended section 408(b) and added new subsection 408(c) requiring that no transferor shall violate any rule prescribed under this section or give a false statement to a transferee in making any disclosure required by such rule and no transferee who, for purposes of resale, acquires ownership of a motor vehicle shall accept any written disclosure required by any rule under this section if such disclosure is incomplete.

expanded and strengthened Section 408 of the Cost Savings Act.

Among other requirements, TIMA precluded the licensing of vehicles, the ownership of which was transferred, for use in any State unless the several requirements were met by the transferee and transferor. The transferee, in submitting an application for a title, is required to provide the transferor's (seller's) title, and if that title contains a space for the transferor to disclose the vehicle's mileage, that information must be included and the statement must be signed and dated by the transferor. TIMA also precluded the licensing of vehicles, the ownership of which was transferred, for use in any State unless the several titling requirements were met. Titles must be printed by a secure printing process or other secure process. They must indicate the mileage and contain space for the transferee to disclose the mileage in a subsequent transfer. As to leased vehicles, the Secretary was required to publish rules requiring the lessor of vehicles with leases to advise its lessee that the lessee is required by law to disclose the vehicle's mileage to the lessor upon the lessor's transfer of ownership. In addition, TIMA required that auction companies establish and maintain records on vehicles sold at the auction, including the name of the most recent owner of the vehicle, the name of the buyer, the vehicle identification number and the odometer reading on the date the auction took possession of the vehicle.

TIMA further provided that its provisions on mileage statements for licensing of vehicles (and rules involving leased vehicles) apply in a State, unless the State has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary.<sup>2</sup> In particular, Section 408(f)(2) provided that the Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e) of Section 408, as the case may be.

<sup>2</sup>In particular, section 408 of the Cost Savings Act was amended by TIMA to add the following relevant part at the end of section 408. Cost Savings Act Section 408(d) (now codified at 49 U.S.C. 32705(b)) requires the disclosure on the vehicle title. Cost Savings Act Section 408(e) (now codified at 49 U.S.C. 32705(c)) addresses leased vehicles. Cost Savings Act subsection (g) (now codified at 49 U.S.C. 32705(e)) addresses wholesale auctions.

*C. Amendments Following the Truth in Mileage Act and the 1994 Recodification of the Law*

In 1988, Congress amended section 408(d) of the Cost Savings Act to permit the use of a secure power of attorney in circumstances where the title was held by a lienholder. The Secretary was required to publish a rule, consistent with the purposes of the Act and the need to facilitate enforcement thereof, providing for the mileage disclosure, the transferor to keep a copy of the power of attorney, and for the original power of attorney to be submitted to the State. See Public Law 100-561 § 401 (adding Section 408(d)(2)(C)), 102 Stat. 2805 (1988). In 1990, Congress amended section 408(d)(2)(C) of the Cost Savings Act, which had been adopted in 1988. The amendment addressed retention of powers of attorneys by states and provided that the rule adopted by the Secretary shall not require that a vehicle be titled in the State in which the power of attorney was issued. See Public Law 101-641 § 7(a), 104 Stat. 4654 (1990).<sup>3</sup>

In 1994, in the course of the 1994 recodification of various laws pertaining to the Department of Transportation, the Cost Savings Act, as amended by TIMA, was repealed. It was reenacted and recodified without substantive change. See Public Law 103-272, 108 Stat. 745, 1048-1056, 1379, 1387 (1994). The statute is now codified at 49 U.S.C. 32705 *et seq.* In particular, Section 408(a) of the Cost Savings Act was recodified at 49 U.S.C. 32705(a). Sections 408(d) and (e), which were added by TIMA (and later amended), were recodified at 49 U.S.C. 32705(b) and (c). The provisions pertaining to approval of State alternate motor vehicle mileage disclosure requirements were recodified at 49 U.S.C. 32705(d).

## II. Statutory Purposes

As discussed above, the Cost Savings Act, as amended by TIMA in 1986, contains a specific provision on approval of State programs. NHTSA "shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the [NHTSA] determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e) as the case may be." (Subsections 408(d), (e) of the Costs Savings Act were recodified to 49 U.S.C. 32705(b) and (c)). Subsection 408(f)(2) of the Costs Savings Act, recodified to

49 U.S.C. 32705(d). In light of this provision, we now turn to our interpretation of the purposes of these subsections, as germane to Virginia's petition.<sup>4</sup>

A purpose of TIMA was to assure that the form of the odometer disclosure precluded odometer fraud. To prevent odometer fraud, which was facilitated in some States by disclosure statements that were separate from titles, under TIMA the disclosure must be contained on the title provided to the transferee and not on a separate document. Related to this, the title was required to contain space for the disclosures. The Senate Report associated with TIMA noted that Federal law had not specified the form in which the odometer reading disclosure must be made. See S. Rep. No. 99-47, at 3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620. In some States, where the disclosure statement was on a separate piece of paper from the vehicle's title, the transferor could easily alter it or provide a new statement with a different mileage. The vehicle could be titled with a lower mileage than in the transferor's disclosure in a State that does not require an odometer reading on the title. *Id.* In this regard, in some States there was no place for recording the odometer reading on the title when the vehicle was sold. *Id.* at 2. A consequence of these practices was that the new title contained no odometer reading and the purchaser/wholesaler could then disclose whatever odometer reading it chose. *Id.*

Another purpose of TIMA was to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title a condition of the application for a title and a requirement for the title issued by the State. Prior to TIMA, odometer fraud was facilitated by the ability of transferees to apply for titles without presenting the transferor's title with the disclosure. To eliminate or significantly reduce abuses associated with this lack of controls, TIMA required that any vehicle, the ownership of which is transferred, may not be licensed unless the application for the title is accompanied by the title of such vehicle. Thus, "in the case of an application for a new motor vehicle certificate of title, if the prior owner's title certificate contains a space for the disclosure of the mileage, when the title

certificate is submitted to the State \* \* \*, it shall contain a statement, signed and dated by the prior owner, of the mileage required to be disclosed by the prior owner." See S. Rep. No. 99-47, at 2-3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620, 5625-26. See also Cost Savings Act, as amended by TIMA, § 408(d), 49 U.S.C. 32705(b).

TIMA also sought to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. In furtherance of these purposes, in the context of paper titles, under TIMA the title must be set forth by means of a secure printing process. It could also be set forth by other secure process that might evolve in the future. As noted in the legislative history, because the title could be printed through a non-secure process, persons could alter it or launder it. See S. Rep. No. 99-47, at 3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620. The House Report noted that "'other secure process' is intended to describe means other than printing which could securely provide for the storage and transmittal of title and mileage information." H.R. Rep. No. 99-833, at 33 (1986). "In adopting this language, the Committee intends to encourage new technologies which will provide increased levels of security for titles." *Id.* See also Cost Savings Act, as amended by TIMA, § 408(d), 49 U.S.C. 32705(b).

Another purpose was to create a record of the mileage on vehicles and a paper trail. The underlying purposes of this record and trail was to enable consumers to be better informed and provide a mechanism through which odometer tampering can be traced and violators prosecuted. The creation of a paper trail would improve the enforcement process by providing evidence of fraudulent transfers, including by consumers and the individuals engaged in such practices. More specifically, the paper trail would document transfers and create evidence showing the incidence of rollbacks. Under TIMA, as part of the paper trail, the title must include a space for the mileage of the vehicle. New applications for titles must include a mileage disclosure statement signed by the prior owner of the vehicle. There would be a permanent record on the vehicle's title at the place where the vehicle is titled, usually the State motor vehicle administration. This record could be checked by subsequent owners or law enforcement officials, who would have a critical snapshot of the vehicle's mileage at every transfer, which is the fundamental link in the paper trail for enforcement. These provisions were aimed at providing purchasers and law

<sup>3</sup>NHTSA previously reviewed this legislative history in 1991 when adopting the current regulations governing powers of attorney. See Odometer Disclosure Requirements, Final Rule, 56 Fed. Reg. 47681 (Sept. 20, 1991).

<sup>4</sup>Virginia's petition does not address disclosures in leases or disclosures by power of attorney. In view of the scope of Virginia's petition, Virginia will continue to be subject to current federal requirements as to leases and disclosures by power of attorney, and we do not address the purposes of the related provisions.



enforcement with the much-needed tools to combat odometer fraud. The House Report associated with TIMA focused on the lack of evidence or "paper trail" showing the incidence of rollbacks as one of the major barriers to decreasing odometer fraud. H.R. Rep. No. 99-833, at 18 (1986). The House Report noted that a purpose of Section 408(d), which required the seller to disclose the mileage on the title and titles to include the mileage disclosure and a space for recording mileage on the next transfer, is to create a permanent record or paper trail for car owners and law enforcement and other State officials to track odometer fraud. *Id.* A permanent record on the vehicle's title would be maintained at the place where it is titled. *Id.* Thus, the underlying purpose of this record and trail was to enable consumers to be better informed and provide a mechanism through which odometer tampering can be traced and violators prosecuted. See Cost Savings Act, as amended by TIMA, § 408(d), 49 U.S.C. 32705(b).

Moreover, the general purpose of TIMA was to protect consumers by assuring that they received valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. The TIMA amendments were directed at resolving shortcomings in the Cost Savings Act.

### III. Virginia's Petition

Virginia proposes to allow parties to transfer title through the Internet by electronic means and to maintain an electronic record of the title in the Virginia Department of Motor Vehicles (VADMV) system. The proposal permits the transferee to request a hard copy of the title, printed by a secure printed process. While it is not entirely clear from Virginia's petition, it appears that the "title" will reside as an electronic record with the VADMV, but that a hard copy of the title will be generated for the transferee, if requested.

The Virginia petition states that its proposal would permit "the transferor to disclose the odometer mileage to the transferee and the transferee to view and acknowledge receipt of the transferor's disclosure in connection with the sale of a motor vehicle, as part of a secure on-line transaction with the VADMV." Under Virginia's proposal, to complete a sale of the motor vehicle, the owner of the vehicle (transferor) and the purchaser of the vehicle (transferee) would be required to perform several steps after they agree upon the sale.

Included in this process is the creation and use of electronic signatures.<sup>5</sup>

Under Virginia's petition, an electronic signature would be created during the process of transferring the title. According to VADMV, the customer number, unique personal identification number (PIN) and date of birth (DOB) of the customer will be used in combination to create the electronic signature for each transferor and transferee. Thus, as a threshold matter, the process for transferring title would require both the transferor and the transferee to obtain a PIN from the VADMV.<sup>6</sup>

The online transaction begins when the transferor logs on to the VADMV's Web site using his/her customer number, date of birth and PIN to verify the transferor's identity. These also would be used to create the electronic signature of the transferor. The transferor would then select the "vehicle transfer of ownership" transaction and either choose the vehicle from a displayed list of eligible vehicles or enter the vehicle's VIN. The transferor would then enter the vehicle sales price, the odometer reading and brand (Actual, Not Actual or Exceeds). After entering this data, the VADMV system will provide the transferor with a unique transaction number. The transferor must provide the unique transaction number to the transferee to complete the transaction. The VADMV system will also prompt the transferor to mail the existing vehicle title to the VADMV for destruction.<sup>7</sup>

The transaction would remain in "pending" status with VADMV until the transferee logs on to complete the

<sup>5</sup> The term "electronic signature" means an electronic sound, symbol or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record. 15 U.S.C. 7006(5) (2004).

<sup>6</sup> According to Virginia, the process whereby a customer obtains a PIN is currently in place, as a PIN already provides a secure and confidential Internet access to VADMV services and is required in order to conduct a number of on-line transactions. In order to obtain a PIN, a customer must provide his or her unique customer number and date of birth and certify, under penalty of perjury, that the customer number and DOB submitted in the PIN request belong to the customer requesting the PIN. Within three (3) business days of the customer's request, the VADMV mails a randomly generated 4-digit PIN to the customer by first class mail, and the assigned PIN is encrypted on the customer's VADMV record. In order to conduct a transaction on VADMV's Internet Web site, the customer is prompted to enter the VADMV assigned PIN and the Web site will prompt the customer to personalize his/her PIN for added security.

<sup>7</sup> According to the Virginia petition, if the transferor fails to return the existing vehicle title to the VADMV, the title is invalidated in the VADMV system and would be unable to transfer title in Virginia.

transfer of ownership transaction. Meanwhile, the VADMV system would automatically check the odometer reading entered by the transferor against the odometer reading on the VADMV system. If the odometer reading entered by the transferor is lower, the transaction will be immediately rejected and referred to the VADMV Law Enforcement Services Division for an investigation.

The transferee would then log on to VADMV's Web site, using his/her customer number, DOB and PIN (this would be the transferee's electronic signature). The transferee would select the pending vehicle transfer of ownership transaction, and he/she would enter the unique transaction number that was provided by the transferor. The transferee would be required to enter the correct transaction number in order to obtain access to the pending transaction. Once such access is obtained, the transferee would verify the sales price, odometer reading and brand that were entered by the transferor. The transaction would process if all the data entered by the transferor is verified and acknowledged as correct by the transferee. Ownership of the vehicle would transfer to the transferee and an electronic title record would be established by VADMV. The VADMV would then maintain the electronic title and would issue a paper title upon the request of the transferee.

If the transferee does not agree with the information entered by the transferor, then the VADMV system will reject the transaction. The transferor will have the opportunity to correct the sales price, odometer reading and brand for the rejected transaction. The transferee would then re-verify the information to ensure the accuracy. A second discrepancy would result in cancellation of the electronic transaction.

Virginia's petition asserts that its proposed alternate odometer disclosure is consistent with federal odometer law, but it did not address the purposes of TIMA. As advanced by VADMV, Virginia's alternative ensures that a fraudulent odometer disclosure can readily be detected and reliably traced to a particular individual by providing a means for the VADMV to validate and authenticate the electronic signatures of both parties. This verification is done through the generation of the customer number and unique PIN that are provided to customers of the VADMV. Virginia states that this unique electronic signature can be quickly and reliably traced to a particular individual.

Second, Virginia states that the electronic odometer disclosure provided by the transferor will be available to the transferee at the time ownership of the vehicle is transferred. During the transfer-of-ownership transaction, the transferee would view the odometer reading and brand information that was supplied by the transferor, thereby ensuring that the transferee is aware of the vehicle's mileage as well as any problem with the odometer that was disclosed by the transferor.

Third, VADVM asserts that its proposal provides a level of security equivalent to that of a disclosure on a secure title document. According to Virginia, the unique electronic signatures (customer number, PIN and DOB) utilized by each party to the transaction in addition to the unique transaction number generated by the VADVM ensure secure access to the on-line transaction and a reliable means of verifying the identities and electronic signatures of each individual. In addition, Virginia notes added security in its proposal because the information from the transferor and transferee must match exactly. If a discrepancy exists that is not corrected, the transaction would automatically be rejected and transfer of ownership would not take place. Virginia states that the same process would be used in dealer transactions with additional safeguards.<sup>8</sup> The additional safeguards will include a requirement that a dealership notify the VADVM of employees authorized to do titling activities for the dealership. This authorization will be stored by the VADVM on-line system. When the employee logs onto the VADVM on-line system, he or she will also be requested to enter the dealer number that is assigned by the VADVM and the employee's logon information. If the VADVM does not show an authorization by the dealership, the employee will not be eligible to continue with the transaction for that dealership.

Virginia refers to an April 25, 2003 letter by former NHTSA Chief Counsel, Jacqueline Glassman, stating that an electronic signature in the lessee-to-lessor context satisfies the requirement for a written disclosure under 49 CFR 580.7(b).<sup>9</sup> Virginia contends that the

written disclosure requirements under 49 CFR 580.7(b) are no different than those under 49 CFR 580.5(c). It also maintains that the electronic record and signature aspects of its proposal comport with the Electronic Signatures in Global and National Commerce Act (E-Sign), 15 U.S.C. 7001 *et seq.*, and Virginia's Uniform Electronic Transactions Act (UETA), Va. Code 46.2-629. Last, Virginia notes that it does not have regulations in effect that address odometer mileage disclosure requirements. Current state law permits the creation of electronic certificates of title, but requires a paper certificate of title for all transfers of vehicle ownership. Va. Code 46.2-603. If its proposal were approved, VADVM would seek legislation to amend Section 46.2-603 to implement the alternate odometer disclosure requirements.

#### IV. Analysis

As discussed above, the standard is that NHTSA "shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the [NHTSA] determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e) as the case may be." The purposes are discussed above, as is the Virginia program. We now provide our initial assessment whether Virginia's proposal satisfies TIMA's purposes as relevant to its petition.<sup>10</sup>

A purpose is to assure that the form of the odometer disclosure precludes odometer fraud. In this regard, NHTSA has initially determined that Virginia's proposed alternate disclosure requirements satisfy this purpose. Under Virginia's proposal, it appears that the "title" will reside as an electronic record with the VADVM, but that a hard copy of the title will be generated for the transferee, if requested. Virginia's proposed system will, therefore, continue to have the odometer disclosure on the virtual "title" itself, as required by TIMA, and not as a separate document. As to TIMA's requirement that the title contain a space for the transferor to disclose the vehicle's mileage, NHTSA does not believe the electronic transaction Virginia has outlined implicates the space requirement. NHTSA, however, assumes that if a hard copy of the title is requested, Virginia will continue to provide a separate

space on the hard copy title, in keeping with TIMA and current practice.

Another purpose of TIMA was to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title a condition of the application for a title and a requirement for the title issued by the State. In this regard, NHTSA has initially determined that Virginia's proposed process satisfies this purpose. During the proposed on-line process for retitling, the disclosure of odometer information occurs during the transfer of ownership and a title is required by Virginia's proposal to complete the transaction. During the on-line transaction, the transferor is instructed to mail the existing title to the VADVM for destruction.<sup>11</sup> If the transaction is successful, the VADVM will retain an electronic title, which includes a record of the transaction and the odometer disclosure information.

Another purpose of TIMA is to prevent alterations to disclosures on titles and to preclude counterfeit titles, through secure processes. NHTSA has initially determined in this matter that Virginia's alternate disclosure requirements appear to provide equivalent security against alterations, tampering or counterfeit titles to a paper title printed through a secure process, if not even more security. Electronic recordation of the odometer reading decreases the likelihood of any subsequent odometer disclosure being altered by erasures or other methods. As we understand Virginia's proposal, once the transaction is completed, VADVM stores an electronic version of the title until the transferee requests it. The transferee may never request the title, even if there is a subsequent transfer. Under this system, all subsequent transfers may be performed through the on-line process. Each time an on-line transfer occurs, the VADVM stores the electronic version of the title, and issues a paper title only upon request. If the title remains in electronic form, the likelihood of an individual altering, tampering or counterfeiting the title is decreased significantly. Moreover, the electronic recordation can detect an attempted alteration or fraudulent disclosure almost immediately. If a transferee requests a paper title, the VADVM will issue a paper title, printed through a secure process, with the requisite odometer information on the title.

Another purpose of TIMA is to create a record of the mileage on vehicles and

<sup>8</sup>Dealers will continue to be subject to the dealer retention requirements as set forth in 49 CFR § 580.8(a), which requires dealers and distributors to retain a copy of odometer disclosure statements that they issue and receive for five years. These requirements are not based upon the TIMA amendments that added Section 408(d) to the Cost Savings Act.

<sup>9</sup>49 CFR 580.7, *Disclosure of odometer information for leased motor vehicles*, governs lessee-to-lessor disclosures.

<sup>10</sup>This initial determination does not address odometer requirements that are not based on Section 408(d) of the Cost Savings Act, as codified at 49 U.S.C. 32705(b). Virginia will continue to be subject to all federal requirements that are not based on Section 408(d).

<sup>11</sup>If the transferor does not return the existing title to VADVM, the existing title will be invalid once the vehicle transfers to the transferee.

a paper trail. NHTSA has initially determined in this matter that Virginia's alternate disclosure requirements provides for a system that creates an equivalent to a "paper trail" that assists law enforcement in identifying and prosecuting odometer fraud. The paper trail starts with the establishment of the electronic signatures of the parties. The electronic signatures of the transferor and transferee are readily detectable and can be reliably traced to the particular individual due to the system's means for validating and authenticating the electronic signature of each individual. VADMV can validate and authenticate an individual electronic signature because the electronic signature consists of the individual's unique customer number, DOB and PIN. In order to obtain a unique customer number, VADMV must have an individual's address on file. In order to obtain a PIN, the individual must also certify, under penalty of perjury, that the customer number and DOB submitted in the PIN request belong to the customer requesting the PIN. The customer number and PIN are required to log on to the VADMV system. Based upon the information provided by each individual to the transaction, the VADMV can trace the PIN to the assigned individual. The ability to identify the individuals to the transaction through the electronic signature<sup>12</sup> maintains the purposes behind the creation of a paper trail since the VADMV will have a history of each transfer of the vehicle and can discover incidences of rollbacks. After the transaction is completed, the title is electronically recorded and stored by the VADMV. It includes the mileage of the vehicle at the transfer. These electronic records will create the electronic equivalent to a paper based system and are accessible to law enforcement officials.

Moreover, the overall purpose of TIMA is to protect consumers by assuring that they received valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. Here, Virginia's alternate disclosure requirements include several prerequisites that make it unlikely that the representations of a

vehicle's actual mileage by the transferor to the transferee would be of lesser validity than representations made through a vehicle transfer by paper title and potentially deter odometer fraud better than a paper title. These prerequisites include the verification of the individuals to the transfer transaction through the issuance of a PIN number from VADMV. Virginia's alternate disclosure requirements also include procedures to assure that a transferee verifies the odometer disclosure made by the transferor. In addition, the verification of the odometer reading provides indication of potential fraud to the transferee should the transferor attempt to enter a different mileage into the system than the mileage the transferee observed on the vehicle when the agreement to purchase was made.<sup>13</sup>

#### V. NHTSA'S Initial Determination

For the foregoing reasons, NHTSA preliminarily grants Virginia's proposed alternate disclosure requirements. This is not a final agency action. NHTSA invites public comments within the scope of this notice. Should NHTSA decide to issue a final grant of this petition, it will likely reserve the right to rescind that grant in the event that information acquired after that grant were to indicate that, in operation, Virginia's alternate requirements do not satisfy applicable standards.

#### *Request for Comments*

##### How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (*see* 49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given under **ADDRESSES**.

<sup>13</sup> Further protection is provided by the VADMV system itself. The system automatically cross references the odometer reading entered by the transferor against the odometer reading on the VADMV system. If the odometer reading entered by the transferor is lower than the mileage recorded in the VADMV system, the VADMV system will immediately reject the transaction and refer the individual to the VADMV Law Enforcement Services Division for investigation.

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Website at <http://dms.dot.gov>. Click on "Help & Information," or "Help/Info" to obtain instructions for filing the document electronically.

##### How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

##### How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

##### Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we also will consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing the final rule, we will consider that comment as an informal suggestion for future rulemaking action.

##### How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You also may see the comments on the Internet. To read the comments on the Internet, go to <http://>

<sup>12</sup> Electronic signatures are generally valid under applicable law. Congress recognized the growing importance of electronic signatures in interstate commerce when it enacted the Electronic Signatures in Global and National Commerce Act (E-Sign). *See* Public Law 106-229, 114 Stat. 464 (2000). E-Sign established a general rule of validity for electronic records and electronic signatures. 15 U.S.C. 7001. It also encourages the use of electronic signatures in commerce, both in private transactions and transactions involving the Federal government. 15 U.S.C. 7031(a).

[www.regulations.gov](http://www.regulations.gov), and follow the instructions for accessing the Docket.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Issued on: June 11, 2008.

**Stephen P. Wood,**

*Assistant Chief Counsel for Vehicle Safety, Standards and Harmonization.*

[FR Doc. E8-13592 Filed 6-23-08; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 070717352-8511-0]

RIN 0648-AV65

#### Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Pelagic Longline Take Reduction Plan

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

**ACTION:** Proposed rule; notice of availability of draft take reduction plan; request for comments.

**SUMMARY:** The National Marine Fisheries Service (NMFS) announces the initial determination that the pelagic longline fishery has a high level of mortality and serious injury across a number of marine mammal stocks, and proposes regulations to implement the Atlantic Pelagic Longline Take Reduction Plan (PLTRP) to reduce serious injuries and mortalities of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery. The PLTRP is based on consensus recommendations submitted by the Atlantic Pelagic Longline Take Reduction Team (PLTRT). This action is necessary because current serious injury and mortality rates of pilot whales and Risso's dolphins incidental to the Atlantic pelagic longline component of a Category I fishery are above insignificant levels approaching a zero mortality and serious injury rate (zero mortality rate goal, or ZMRG), and therefore, inconsistent with the long-term goal of the Marine Mammal Protection Act (MMPA). The PLTRP is intended to meet the statutory mandates

and requirements of the MMPA through both regulatory and non-regulatory measures, including a special research area, gear modifications, outreach material, observer coverage, and captains' communications.

**DATES:** Written comments on the proposed rule must be received no later than 5 p.m. eastern time on September 22, 2008.

**ADDRESSES:** You may submit comments, identified by the Regulatory Information Number (RIN) 0648-AV65, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- Facsimile (fax): 727 824-5309, Attn: Assistant Regional Administrator, Protected Resources.
- Mail: Assistant Regional Administrator for Protected Resources, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

This proposed rule, references, and background documents for the PLTRP can be downloaded from the Take Reduction web site at <http://www.nmfs.noaa.gov/pr/interactions/trt/teams.htm#pl-trt.htm> and the NMFS Southeast Regional Office website at <http://sero.nmfs.noaa.gov/pr/pr.htm>.

**FOR FURTHER INFORMATION CONTACT:** Laura Engleby or Jennifer Lee, NMFS, Southeast Region, 727-824-5312, or Kristy Long, NMFS, Office of Protected Resources, 301-713-2322. Individuals who use telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. eastern time, Monday through Friday, excluding Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Bycatch Reduction Requirements in the MMPA

Section 118(f)(1) of the MMPA requires NMFS to develop and implement take reduction plans to assist in the recovery or prevent the depletion

of each strategic marine mammal stock that interacts with Category I and II fisheries. It also provides NMFS discretion to develop and implement a take reduction plan for any other marine mammal stocks that interact with a Category I fishery, which the agency determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.

The MMPA defines a strategic stock as a marine mammal stock: (1) for which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level; (2) which is declining and is likely to be listed under the Endangered Species Act (ESA) in the foreseeable future; or (3) which is listed as threatened or endangered under the ESA or as a depleted species under the MMPA (16 U.S.C. 1362(2)). PBR is the maximum number of animals, not including natural mortalities, that can be removed annually from a stock, while allowing that stock to reach or maintain its optimum sustainable population level. Category I or II fisheries are fisheries that, respectively, have frequent or occasional incidental mortality and serious injury of marine mammals.

The immediate goal of a take reduction plan for a strategic stock is to reduce, within six months of its implementation, the incidental serious injury or mortality of marine mammals from commercial fishing to levels less than PBR. The long-term goal is to reduce, within five years of its implementation, the incidental serious injury and mortality of marine mammals from commercial fishing operations to insignificant levels approaching a zero serious injury and mortality rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. The insignificance threshold, or upper limit of annual incidental mortality and serious injury of marine mammal stocks by commercial fisheries that can be considered insignificant levels approaching a zero mortality and serious injury rate, has been defined at 50 CFR 229.2 as 10 percent of the PBR for a stock of marine mammals.

#### Impetus and Scope of the Plan

The impetus for this plan was a 2003 settlement agreement between NMFS and the Center for Biological Diversity (CBD), that required the convening of a Take Reduction Team (the PLTRT) under the MMPA by June 30, 2005, to address serious injury and mortality of short- and long-finned pilot whales and common dolphins in the Atlantic

portion of the Atlantic Ocean, Caribbean, Gulf of Mexico, Large Pelagics Longline Fishery, then, and currently, listed as a Category I fishery. At the time of the settlement agreement, the western North Atlantic stocks of these three species were identified as strategic stocks.

Based on updated information, the 2005 U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments report (SAR) reclassified long- and short-finned pilot whales as non-strategic. The SAR indicated that serious injuries and mortalities in the Atlantic pelagic longline fishery were primarily limited to the Mid-Atlantic Bight (MAB) (Waring *et al.*, 2006). Although the 2006 SAR lists the status of long- and short-finned pilot whales as unknown, the draft 2007 SAR again reports that the estimated average annual human-related mortality and serious injury for the last five years does not exceed PBR and the stocks are not strategic (Waring *et al.*, 2007a; Waring *et al.*, 2007b).

The 2005 SAR also reported that within the previous five years, there were no observed serious injuries or mortalities of common dolphins in the pelagic longline fishery; therefore, this stock was reclassified as non-strategic in the 2005 SAR, based on estimates of serious injuries and mortalities in both the pelagic longline fishery as well as other observed fisheries.

Risso's dolphins, although not included in the settlement agreement, also sustain serious injuries and mortalities incidental to the Atlantic pelagic longline fishery.

For Risso's dolphins and long-finned and short-finned pilot whales, estimated serious injury and mortality levels in the pelagic longline fishery exceed the insignificance threshold but do not exceed the PBR level for the stocks. Because these species are below PBR and considered non-strategic stocks but interact with a Category I fishery, NMFS directed the PLTRT to develop and submit a draft Take Reduction Plan to the agency within 11 months, in accordance with the long-term goal of MMPA section 118, focusing on reducing incidental mortalities and serious injuries of pilot whales and Risso's dolphins to a level approaching a zero mortality and serious injury rate within five years of implementation of the plan.

#### History of the PLTRT

In accordance with the MMPA and the settlement agreement, NMFS convened the PLTRT in June 2005. NMFS announced the establishment of the PLTRT on June 22, 2005, in the

**Federal Register** (70 FR 36120). NMFS selected team members according to guidance provided in MMPA section 118(f)(6)(C). NMFS strove to select an experienced and committed team with a balanced representation of stakeholders. Members of the PLTRT included fishermen and representatives of the Atlantic pelagic longline fishing industry, environmental groups, marine mammal biologists, fisheries biologists, and representatives of the Mid-Atlantic Fishery Management Council, the Marine Mammal Commission, and NMFS.

Four professionally facilitated meetings and two full-team conference calls were held between June 2005 and May 2006. During these meetings, NMFS presented abundance estimates, serious injury and mortality estimates of pilot whales and Risso's dolphins, characterization and regulatory structure of the pelagic longline fishery, and analyses of observer, logbook, and other fisheries data to the PLTRT. In addition, NMFS developed a predictive model that analyzed a number of variables (e.g., environmental factors, gear types, etc.) to determine which variables may be useful in predicting and/or minimizing interactions between marine mammals and longline gear as well as possible impacts on target species catch and bycatch of other protected species (e.g., sea turtles). Each meeting included facilitated discussions to draft and revise various components of the PLTRP, with an emphasis on management and research recommendations. The PLTRT reached consensus at the May 2006 meeting, and on June 8, 2006, submitted to NMFS a Draft PLTRP including recommendations for bycatch reduction measures, as well as research needs and other non-regulatory measures (PLTRT, 2006).

#### Distribution, Stock Structure, and Abundance of Pilot Whales

In the MAB, the Atlantic pelagic longline fishery interacts with two species of pilot whales that occur in that area. Long-finned pilot whales are distributed worldwide in cold temperate waters in both the Northern (North Atlantic) and Southern Hemispheres. In the North Atlantic, the species is broadly distributed and thought to occur from 40° to 75° N. lat. in the eastern North Atlantic and from 35° to 65° N. lat. in the western North Atlantic (Abend and Smith, 1999). Short-finned pilot whales are also distributed worldwide in warm temperate and tropical waters. In U.S. Atlantic waters, this species is found in the Gulf of Mexico (GOM) and in the western North

Atlantic as far north as the central MAB. Both species tend to favor the continental shelf break and slope, as well as other areas of high relief, but are also present offshore in the pelagic environment. In the western North Atlantic, they may be associated with the north wall of the Gulf Stream and with thermal fronts (Waring *et al.*, 1992).

The two species are difficult to distinguish during visual abundance surveys, and therefore, in many cases, reference is made to the combined species, *Globicephala spp.* Due to this difficulty in species identification, the species' boundaries for short-finned and long-finned pilot whales in the western North Atlantic have not been clearly defined. However, their distributions are thought to overlap along the U.S. mid-Atlantic coast between 35° and 39° N. lat. (Payne and Heinemann, 1993; Bernard and Reilly, 1999). The greatest area of overlap in distribution of the two species seems confined to an area along the shelf edge between 38° and 40° N. lat. in the MAB, where long-finned pilot whales are present in winter and summer and short-finned pilot whales are present at least in summer (Waring *et al.*, 2007a).

Stock structure is not well known for long-finned or short-finned pilot whales in the North Atlantic. Indirect and direct studies on long-finned pilot whales indicate that there is some degree of stock differentiation within the North Atlantic (Mercer, 1975; Bloch and Lastein, 1993; Abend and Smith, 1995; Abend and Smith, 1999; Fullard *et al.*, 2000). For short-finned pilot whales, there is no available information on whether the North Atlantic stock is subdivided into smaller stocks.

The total number of pilot whales off the eastern U.S. and Canadian Atlantic coast is unknown, although estimates from particular regions of their habitat (e.g., continental slope) exist for select time periods (see Waring *et al.*, 2006 for a complete summary). Observers at sea cannot reliably distinguish long- and short-finned pilot whales visually. As a result, sightings of pilot whales are not identified to species and resulting survey estimates are considered joint estimates for both species. The best available estimate for *Globicephala spp.* in the U.S. Exclusive Economic Zone (EEZ) is the sum of the estimates from the summer 2004 U.S. Atlantic surveys, 31,139 (Coefficient of Variation, or CV=0.27), where the estimate from the northern U.S. Atlantic is 15,728 (CV=0.34), and from the southern U.S. Atlantic is 15,411 (CV=0.43) (Waring *et al.*, 2006). This joint estimate is the most

recent available, and these surveys include the most complete coverage of the species' habitats (although the PLTRT recognized that this estimate was limited to the U.S. EEZ). For *Globicephala spp.*, the minimum population estimate, which accounts for uncertainty in the best estimate (Wade and Angliss, 1997), is 24,866.

#### **Distribution, Stock Structure, and Abundance of Risso's Dolphins**

Risso's dolphins occur worldwide in warm temperate and tropical waters roughly between 60° N. and 60° S. lat., and records of the species in the western North Atlantic range from Greenland south, including the Gulf of Mexico (Kruse *et al.*, 1999). In the U.S. Atlantic EEZ, the species is most commonly seen in the MAB shelf edge year round and is rarely seen in the Gulf of Maine (Waring *et al.*, 2004). Risso's dolphins are pelagic, preferring waters along the continental shelf edge and deeper, as well as areas of submerged relief such as seamounts and canyons (Kruse *et al.*, 1999). There is no information available on population structure for this species.

Abundance estimates for Risso's dolphins off the U.S. or Canadian Atlantic coast are unknown, although eight estimates from particular regions of their habitat exist for select time periods (Waring *et al.*, 2006). Sightings of Risso's dolphins are almost exclusively in the continental shelf edge and continental slope areas. The best available abundance estimate for Risso's dolphins in the U.S. EEZ is the sum of the estimates from the summer 2004 U.S. Atlantic surveys, 20,479 (CV=0.59), where the estimate from the northern U.S. Atlantic is 15,053 (CV=0.78), and from the southern U.S. Atlantic is 5,426 (CV=0.540) (Waring *et al.*, 2006). This joint estimate is the most recent available, and the surveys have the most complete coverage of the species' habitat (although the PLTRT recognized that this estimate was limited to the U.S. EEZ). The minimum population estimate for the western North Atlantic Risso's dolphin, which accounts for uncertainty in the best estimate (Wade and Angliss, 1997), is 12,920.

#### **Potential Biological Removal and Serious Injury and Mortality Estimates**

PBR is defined as the product of minimum population size (in this case, of the portion of the stock surveyed within the U.S. EEZ), one-half the maximum productivity rate, and a recovery factor (MMPA Sec. 3(20), 16 U.S.C. 1362). The maximum productivity rate for both pilot whales and Risso's dolphin is 0.04, the default

value for cetaceans (Barlow *et al.*, 1995). The recovery factor, which provides greater protection for endangered, depleted, or threatened stocks, or stocks of unknown status relative to optimum sustainable population (OSP), is 0.48 for both species because the CV of the average mortality estimate is between 0.3 and 0.6 (Wade and Angliss, 1997), and because both stocks are of unknown status. The PBR for both species of western North Atlantic pilot whales combined (i.e., *Globicephala spp.*) is 249, and the PBR for the western North Atlantic stock of Risso's dolphin is 129 (Waring *et al.*, 2007b).

The 2007 draft SAR reported an average combined annual serious injury and mortality incidental to pelagic longline fishing of 86 pilot whales (CV=0.16) and 34 Risso's dolphins (CV=0.32), based on the years 2001–2005 (Waring *et al.*, 2007b). However, more recent estimates (Fairfield-Walsh and Garrison, 2007; Garrison, 2007) bring the 5-year average combined serious injury and mortality for pilot whales to 109 animals (CV=0.194, years 2002–2006) and for Risso's dolphins to 20 animals (CV=0.381, years 2002–2006). Based on this information, serious injury and mortality of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery is below PBR, but exceed the insignificance threshold. NMFS believes there is a high level of serious injury and mortality in the Atlantic pelagic longline fishery across a number of marine mammal stocks, warranting the development and implementation of a take reduction plan for both pilot whale and Risso's dolphin stocks.

#### **Components of the Proposed PLTRP**

The proposed PLTRP takes a stepwise, adaptive management approach to achieve the long-term goal of reducing serious injuries and mortality of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery to insignificant levels approaching a zero mortality and serious injury rate within five years of implementation. A series of management measures are designed to make an initial significant contribution to reducing serious injury and mortality. The proposed PLTRP also includes research recommendations for better understanding how pilot whales and Risso's dolphins interact with longline gear, as well as assessing current and potential new management measures. The PLTRT agreed to evaluate the success of the final PLTRP at periodic intervals over the next five years and to consider amending the PLTRP based on

the results of ongoing monitoring, research, and evaluation.

The proposed PLTRP reflects the results of a predictive model, which analyzed a number of variables (e.g., environmental factors, gear characteristics, etc.) to determine which variables may be useful in predicting and/or minimizing interactions between marine mammals and longline gear, and possible impacts on target species catch and bycatch of other protected species (e.g., sea turtles). A total of 39 variables were developed and considered as potential explanatory factors in the predictive model. These variables are classified into five major categories: environment, space and time, gear type, effort, and catch. These analyses employed Pelagic Observer Program (POP) data collected from 1992 to 2004 and modeled the effects of gear and environmental factors on the probability of interacting with pilot whales or Risso's dolphins.

The predictive model proved to be an invaluable tool for the PLTRT to develop management strategies, since multiple variables could be tested and evaluated. For pilot whales, variables found to have significant correlations included fishing area (81 percent of interactions occur along the MAB), distance from the 200 m (109 fathoms) isobath (all interactions were observed within 40 km (21.6 nautical miles, nm) of the 200 m (109 fathoms) isobath), water temperature (peak interactions occur between 70–80° F (21–27° C)), mainline length (interactions were twice as high in sets with mainline lengths greater than 20 nm (37.02 km)) and swordfish damage (interaction rates were three times higher in sets with damage to swordfish catch). Further analysis of the mainline length effect indicated that fishing with mainlines less than 20 nm (37.02 km) in length resulted in an approximately 50 percent reduction in the probability of interacting with a pilot whale relative to longer mainline lengths. For Risso's dolphins, similar results were found, although correlations were not as strong. Interactions with Risso's dolphins were also significantly correlated with the Northeast Coastal area and with sets that used squid as bait.

After considering the results of the predictive model, the PLTRT recommended a suite of management strategies to reduce mortality and serious injury of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery. This proposed rule addresses both the regulatory and non-regulatory measures recommended by the PLTRT. NMFS proposes to incorporate nearly all of the PLTRT's

consensus recommendations in the Draft PLTRP into the proposed PLTRP, with only minor modifications. Changes from the PLTRT's consensus recommendations are noted, along with the rationale for any proposed change.

One consensus recommendation will not be implemented through this proposed rule, but will be implemented under different authority. Specifically, the PLTRT recommended NMFS develop and implement a mandatory certification program to educate owners and operators of pelagic longline vessels about ways to reduce serious injury and mortality of marine mammal bycatch.

On August 19, 2005, NMFS published a proposed rule to consolidate the management of all Atlantic Highly Migratory Species (HMS) under one Fishery Management Plan (FMP) (70 FR 48804). The proposed rule included a certification program to educate vessel owners and operators on using required equipment to handle and release sea turtles and other protected species (with recertification every three years). The PLTRT recommended that the certification program proposed in the August 2005 Draft Consolidated HMS FMP and associated proposed rule (70 FR 48804) be expanded to incorporate information regarding marine mammal interactions, including:

- Safe handling and release techniques for marine mammals;
- Current regulations and guidelines that apply to the fishery, especially those related to marine mammal bycatch, and an explanation of the purpose and justification of those regulations and guidelines;
- Information from logbooks and auxiliary forms associated with particular research projects;
- Guidelines for captain's communications;
- Updates on NMFS' observer program, including relevant recent findings;
- Description of research and monitoring projects aimed at reducing marine mammal bycatch, including an explanation of the purpose of this research and a description of key research results to date; and
- Information on marine mammal species identification.

NMFS is proposing to implement the PLTRT's recommendation using NMFS' existing regulatory authority at 50 CFR 635.8, Workshops. On October 2, 2006, NMFS published the Consolidated HMS FMP and the associated final rule (71 FR 58058), which requires all HMS longline fishermen to attend a NMFS workshop and earn certification in mitigation, handling, and release techniques for sea turtles, sea birds, and other protected

species. This rule provides NMFS with the authority necessary to implement the PLTRT's recommendation without additional regulation. Since 2007, NMFS has incorporated education on careful handling and release techniques for marine mammals, current regulations and guidelines that apply to the fishery related to marine mammal bycatch, and an explanation of the purpose and justification of those regulations and guidelines into these workshops. NMFS proposes to expand the content of the workshops as appropriate to meet the needs of the PLTRP.

The PLTRT also discussed other mitigation and conservation measures that they did not include in their consensus recommendations because they were either economically or technologically infeasible or did not meet the goals of the MMPA. Information on these can be reviewed in the Draft PLTRP (PLTRT, 2006).

#### Proposed Regulatory Measures

NMFS proposes the following three regulatory measures: (1) Establish a Cape Hatteras Special Research Area (CHSRA), with specific observer and research participation requirements for fishermen operating in that area; (2) set a 20-nm (37.02-km) upper limit on mainline length for all pelagic longline sets within the MAB; and (3) develop and publish an informational placard that must be displayed in the wheelhouse and the working deck of all active pelagic longline vessels in the Atlantic fishery.

#### *Cape Hatteras Special Research Area*

The PLTRT recommended NMFS designate a special research area offshore of Cape Hatteras (hereafter referred to as the CHSRA) with specific observer and research participation requirements for fishermen operating in that area. The proposed CHSRA includes all waters inside and including the rectangular boundary described by the following lines: 35° N. lat., 75° W. long., 36° 25' N. lat., and 74° 35' W. long. In order to use pelagic longline gear within this area, the PLTRT recommended NMFS implement through regulations the following requirements: (1) The owner and operator of the vessel must accept, facilitate, and be capable of taking scientific observers; (2) the owner and operator of the vessel must be both willing and able to participate in government-sponsored research targeting marine mammal bycatch reduction; pilot whale behavior, biology, ecology; or other related topics; and (3) the operator of the vessel must

maintain daily communications with other local vessel operators regarding marine mammal interactions with the goal of identifying and exchanging information relevant to avoiding bycatch of marine mammals and other protected species.

The proposed CHSRA encompasses a 5,927 sq km (2,288 sq mile) region that over the past five years has exhibited both high fishing effort and high pilot whale bycatch rates. NMFS delineated the area to encompass the vast majority of the observed interactions and to exclude the area where inshore longline vessels target yellowfin tuna and coastal sharks, since the inshore area had low observed interaction rates.

Vessels in the proposed CHSRA would be required to carry observers when requested. In the proposed regulations, vessels deploying or fishing with pelagic longline gear in the CHSRA or transiting through the CHSRA with pelagic longline gear onboard must call the NMFS Southeast Fisheries Science Center (SEFSC) at least 48 hours prior to embarking on the trip. This requirement would be in addition to any existing selection and notification requirement for observer coverage by the POP. If a vessel is assigned an observer, the vessel must take the observer during that trip; if the vessel refuses to take the observer, the vessel is prohibited from deploying or fishing with pelagic longline gear in the CHSRA or transiting through the CHSRA with pelagic longline gear onboard. NMFS also proposes that no waivers be granted to vessels fishing in the CHSRA that do not meet observer safety requirements.

The collection of observer data representing all vessels in an area is critical not only for obtaining accurate (i.e., unbiased) estimates of bycatch, but also for collecting information about factors that may be important for mitigating bycatch (NMFS 2004). For this reason, NMFS believes full compliance with observer requirements in the CHSRA is essential. As noted earlier, vessels that fish primarily in the MAB have higher observed marine mammal take rates than those in other areas. However, 58 percent of pelagic longline vessels reporting effort in the MAB between 2001 and 2005 have never been observed in the MAB. This is because certain vessels are routinely exempted from observer coverage because they do not meet the observer safety or accommodations requirements, which may bias observer data (i.e., data would not be representative of actual fishing effort). In order for NMFS to accurately monitor levels of serious injury and mortality of marine mammals incidental to the pelagic longline

fishery, and thereby, monitor the effectiveness of the final PLTRP, data collected by observers must be representative of both fishing effort and bycatch. By not allowing exemptions for observer coverage within the CHSRA, NMFS will be able to improve observer data and bycatch estimates within the CHSRA.

In addition to the proposed requirement for carrying observers, NMFS proposes requirements for vessels in the CHSRA to participate in research. The establishment of the CHSRA and the research participation requirement form an essential component of the proposed PLTRP, enabling focused research on pilot whale interactions with the pelagic longline fishery, thus contributing to achieving the objectives of the PLTRP. Obtaining better data for characterizing fishery interactions is a high priority. The PLTRT was limited in its ability to develop management strategies to reduce the frequency of interactions between pilot whales and longline fishing gear due to a lack of information regarding the nature, timing, and causes of these interactions. The proposed CHSRA would enable NMFS to assess current and potential new management measures and would be fundamental in formulating effective bycatch reduction strategies.

To implement the research participation requirement, NMFS proposes that in addition to observing normal fishing activities, observers also conduct additional scientific investigations aboard pelagic longline vessels in the CHSRA, as authorized by MMPA section 118(d)(2)(C). These investigations would be designed to support the goals of the PLTRP. The observers will inform vessel operators of the specific additional investigations that may be conducted during the trip. An observer may direct vessel operators to modify their fishing behavior, gear, or both. Instead of or in addition to carrying an observer, vessels may be required to carry and deploy gear provided by NMFS or an observer or modify their fishing practices. By calling the NMFS SEFSC, per the observer requirement described above, vessels would be agreeing to take an observer and acknowledging they are both willing and able to participate in research in the CHSRA without any compensation. If vessels are assigned any special research requirements, they must participate in the research for the duration of the assignment. If they do not participate in the research, they are prohibited from deploying or fishing with pelagic longline gear in the CHSRA

or transiting through the CHSRA with pelagic longline gear onboard.

Although NMFS strongly supports the PLTRT's goal of identifying and exchanging information among vessel operators relevant to avoiding bycatch of marine mammals and other protected species, NMFS is not proposing regulations to require the operator of the vessel to maintain daily communications with other local vessel operators regarding marine mammal interactions within the CHSRA. Implementation of this recommendation via regulation would require NMFS to conduct extensive surveillance for monitoring and enforcement. Even then, NMFS would rarely have information on an individual vessel's fishing conditions, catch, and bycatch. Thus, enforcement of such a regulatory requirement would be impractical.

Available information from three case studies of voluntary captains' communication programs supports the inference that voluntary communication programs have substantially reduced fisheries bycatch and provided large economic benefits that outweigh the relatively nominal operating costs (Martin *et al.*, 2005). For this communication strategy to be effective, the exchange of information must be timely, the entire fleet in a region must cooperate, and it must result in an action being taken to either avoid or reduce bycatch (e.g., captains need to describe the nature of their protected species interactions, discuss the results of any mitigation or safe handling/release measures used, and share best practices).

Atlantic pelagic longline fishermen are already motivated to avoid interactions with marine mammals, as these interactions can result in significant economic loss due to loss of both target catch and gear from depredation and entanglements, respectively. Marine mammal interactions also represent a safety risk to vessel operators and crew, as pilot whales caught in gear can be very dangerous due to their size and strength. For these reasons, NMFS believes outreach would be more effective in this fishery. Therefore, NMFS will work instead with CHSRA researchers and fishermen to encourage captains' communications in the CHSRA through voluntary cooperation and as part of ongoing research.

#### *Mainlength Line*

NMFS proposes, in accordance with the PLTRT recommendation, to set a 20-nm (37.02-km) upper limit on mainline length for all pelagic longline sets within the MAB, including the

CHSRA. Operators of individual fishing vessels would be allowed to fish multiple sets at one time, if they so desired, but the mainline length for each set could not exceed 20 nm (37.02 km).

The predictive model developed for pilot whales was used to explore the potential effects of a mandated reduction in mainline length to less than or equal to 20 nm (37.02 km). Of the potential changes to fishing gear discussed by the PLTRT, this management measure was the only one to have a significant effect on pilot whale interactions. The predictive model estimates a reduction in pilot whale interactions of approximately 26 percent when longlines in the MAB are limited to less than 20 nm (37.02 km) in length. This reduction assumes that fishermen will sometimes fish additional sets to compensate for hooks lost by limiting mainline length to 20 nm (37.02 km). The PLTRT considered a 50 percent compensation in fishing effort for lost hooks a reasonable scenario.

At NMFS' discretion, per the PLTRT's recommendation, NMFS may waive this restriction in the CHSRA in specific cases to support research for reducing bycatch of marine mammals in the pelagic longline fishery. In cases where NMFS intends to waive this restriction, NMFS will consult with the PLTRT and publish a notice of the decision in the **Federal Register**.

#### *Careful Handling and Release Guidelines Posting Requirement*

The PLTRT recommended NMFS develop and publish an informational placard that must be displayed in the wheelhouse and on the working deck of all active pelagic longline vessels in the Atlantic fishery. The placard would be based on the existing marine mammal careful handling and release guidelines for pelagic longline gear. The PLTRT specified the placard should draw on information presented in a mandatory certification program and reference filling out a Marine Mammal Injury and Mortality Reporting Form for every marine mammal interaction as required by MMPA section 118(e) and 50 CFR 229.6.

NMFS proposes to implement this PLTRT recommendation. NMFS believes this proposed action would facilitate the careful handling and release of any pilot whale, Risso's dolphin, or other small cetacean caught incidentally during pelagic longline fishing. The posting requirement would ensure NMFS' guidelines are readily available for reference during a capture or entanglement event.



### Proposed Non-regulatory Measures

The PLTRT recommended implementing the following non-regulatory measures: (1) Provide for 12 to 15 percent observer coverage throughout all Atlantic pelagic longline fisheries that interact with pilot whales or Risso's dolphins; (2) encourage vessel operators (i.e., captains) throughout the fishery to maintain daily communications with other local vessel captains regarding protected species interactions, with the goal of identifying and exchanging information relevant to avoiding protected species bycatch; (3) update careful handling/release guidelines, equipment, and methods; and (4) provide quarterly reports of marine mammal interactions in the pelagic longline fishery to the PLTRT.

#### *Increased Observer Coverage*

The PLTRT recommended NMFS increase observer coverage to 12 to 15 percent throughout all Atlantic pelagic longline fisheries that interact with pilot whales and Risso's dolphins to ensure representative sampling of fishing effort. They specified sampling should be designed to achieve statistical reliability of marine mammal bycatch estimates and should also take into account the objectives of marine mammal bycatch reduction. If resources are not available to provide such observer coverage for all fisheries, regions, and seasons, the PLTRT recommended NMFS allocate observer coverage to fisheries, regions, and seasons with the highest observed or reported bycatch rates of pilot whales. The PLTRT recommended additional coverage be achieved by either increasing the number of NMFS observers who have been specially trained to collect additional information supporting marine mammal research, or by allowing designated and specially-trained "marine mammal observers" (deployed by either NMFS or cooperating researchers) who would supplement the traditional observer coverage.

NMFS proposes to implement this recommendation within the constraints of available funding. A simulation analysis evaluating the effects of increased observer coverage on the precision of bycatch estimates indicated: (1) 12 to 15 percent observer coverage would result in the most significant gains in precision, (2) setting a higher target in this range would "guard" against unforeseen problems placing observers on vessels, and (3) further increases in coverage would yield relatively little additional precision despite significantly higher costs. Pilot whales are primarily

observed to interact with the longline fishery in the MAB and Northeast Coastal areas; Risso's dolphins interact with the fishery in these areas as well as the Northeast Distant area. Based on these observations, NMFS proposes to, within the constraints of available funding, increase observer coverage to 12 to 15 percent, in order of priority, in the (1) CHSRA, (2) MAB, and (3) other areas, such as Northeast Coastal. While this measure is geared towards improving the precision of serious injury and mortality estimates, additional coverage would also better characterize fishing operations and marine mammal behavior, facilitate collection of data needed for research, and increase opportunities to collect biopsy samples from hooked or entangled marine mammals.

#### *Captains' Communications*

The PLTRT recommended NMFS encourage vessel operators (i.e., captains) to maintain daily communication with other local vessel operators regarding protected species interactions throughout the Atlantic pelagic longline fishery with the goal of identifying and exchanging information relevant to avoiding protected species bycatch. Captains' communication were considered as both a strategy for avoiding marine mammals' exposure to vessels and gear and as a strategy for reducing the probability of an interaction once marine mammals are in the vicinity of the gear.

NMFS is proposing to implement this non-regulatory recommendation. The basis for NMFS' support of a voluntary captains' communications program is provided in the discussion of the CHSRA.

#### *Careful Handling and Release Guidelines*

The PLTRT recommended NMFS update the guidelines for careful handling and release of entangled or hooked marine mammals. They recommended NMFS' guidelines include descriptions of appropriate equipment and methods. They also encouraged both NMFS and the pelagic longline industry to develop new technologies, equipment, and methods for safer and more effective handling and release of entangled or hooked marine mammals. They recommended developments be evaluated carefully and incorporated into revised guidelines for careful handling and release of marine mammals when appropriate.

In the winter of 2006, in preparation for the workshops for HMS fishermen, NMFS worked with the PLTRT and other NMFS staff in updating a

preexisting placard to reflect the best available information on careful handling and release of marine mammals. This version of the placard has been distributed at the training workshops in 2007 and 2008. NMFS proposes to periodically update the guidelines per the PLTRT's recommendation, based on any new technologies, equipment, and methods for safer and more effective handling and release of entangled or hooked marine mammals.

#### *Additional Research and Data Collection*

The PLTRT also recommended short-, medium-, and long-duration research and data collection goals designed to enhance the success of the PLTRP. While the predictive model provided tremendous guidance to the PLTRT, there is a significant lack of information concerning how pilot whales and Risso's dolphins interact with the pelagic longline fishery. Thus, many of the research recommendations are general in scope and applicable to both pilot whales and Risso's dolphins unless specified otherwise. The complete list of these recommendations can be found in Section IX of the Draft PLTRP (PLTRT, 2006). The PLTRT recommended that priority be given to: (1) research on species that are closest to or exceed PBR levels; (2) research to evaluate the effects of implemented management measures, and (3) research on species specific abundance, mortality, and post-hooking survivorship. The PLTRT also recommended that, as funds become available for pelagic longline take reduction-related research, a subgroup of the PLTRT be convened to advise on selection of research projects based on priorities and the amount of funds available.

NMFS proposes to pursue the additional research and data collection goals outlined by the PLTRT, within the constraints of available funding. Further, NMFS proposes to consider the PLTRT's recommendations for additional research and data collection when establishing NMFS' funding priorities. NMFS would follow the recommendations to the extent that good scientific practice and resources allow. As feasible and appropriate, NMFS would consult with PLTRT members during this process.

#### **Adaptive Management and Monitoring**

The proposed PLTRP takes a stepwise, adaptive management approach to achieving the long-term goal of reducing, within five years of its implementation, serious injuries and

mortalities of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery to insignificant levels approaching a zero mortality and serious injury rate. A series of monitoring and evaluation steps are built into the five-year implementation phase of the proposed PLTRP.

Under the proposed PLTRP, the PLTRT will periodically: (1) analyze the status of scientific information on pilot whales and Risso's dolphins, (2) evaluate the effectiveness of the PLTRP, and (3) adjust the PLTRP's management measures and research program, as appropriate, to ensure that the goal of the PLTRP will be met within 5 years of its implementation. Per the PLTRT's request, NMFS will provide any updates available on the following types of information to inform these periodic assessments: (1) Status of PLTRP implementation, (2) SARs; (3) habitat analyses; (4) data collection and research findings; (5) voluntary efforts carried out by the pelagic longline industry; (6) status of observer coverage; and (7) predictive model results for pilot whales and Risso's dolphins, based on updated data.

The timing of these assessments would be tied to both the availability of data and the time needed to adequately evaluate the effectiveness of management measures or the results of the research program. As requested by the PLTRT, NMFS will provide them with quarterly reports of bycatch of marine mammals in the pelagic longline fishery. The quarterly reports will help determine when it will be timely and useful for the PLTRT to reconvene. In conjunction with the receipt of quarterly bycatch reports, the PLTRT agreed to assess the merits of convening future PLTRT meetings, either in-person or by teleconference.

#### Public Comments Solicited

NMFS is soliciting comments on any aspect of this proposed rule, including the development and implementation of the PLTRP pursuant to MMPA section 118(f)(1) and the specific regulatory and non-regulatory measures proposed. NMFS is particularly interested in comments concerning (1) NMFS' view that the level of bycatch signifies a high level of bycatch in the Atlantic pelagic longline fishery across a number of marine mammal stocks, warranting the development and implementation of a take reduction plan for pilot whale and Risso's dolphin stocks, (2) NMFS' decision to implement the PLTRT's recommendation for a mandatory certification program using NMFS' existing authority at 50 CFR 635.8, Workshops, (3) the research

recommendations and priorities for better understanding how pilot whales and Risso's dolphins interact with longline gear, as well as for assessing current and potential management measures, (4) the CHSRA requirements, (5) expected fishing effort compensation under the proposed mainline length restriction, and (6) information on careful handling and release of marine mammals.

#### Classification

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management programs of North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, and Massachusetts. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications under Executive Order 13132.

This proposed rule has been determined to be not significant under Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA), pursuant to section 603 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and its legal basis are included in the preamble of this proposed rule. A summary of the analysis follows. For a copy of this analysis, see the **ADDRESSES** section.

NMFS considers all HMS permit holders to be small entities because they either had average annual receipts less than \$4.0 million for fish-harvesting, average annual receipts less than \$6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in this industry. An "active" pelagic longline vessel is considered to be a vessel that reported pelagic longline activity in the HMS logbook. The number of active HMS pelagic longline vessels has been precipitously decreasing since 1994. In the MAB, only 85 unique pelagic longline vessels reported effort between 2001 and 2006. The number of vessels fishing in the MAB has declined in recent years, and between 2003 and 2006, the number of vessels reporting effort in the MAB ranged between 38 and 41.

The alternatives considered and analyzed include four options. Alternative 1 (the no action alternative) would maintain the status quo management for the pelagic longline fishery under the HMS FMP. Alternative 2 would implement only the non-regulatory components recommended in the Draft PLTRP, while allowing time for collecting additional scientific data prior to implementing regulatory measures. Alternative 3, the preferred alternative, would limit the mainline length to 20 nm or less within the MAB, designate the CHSRA with associated observer and research participation requirements, and require all pelagic longline vessels to post an informational placard on careful handling and release of marine mammals. Alternative 4 would include a six-month closure (July-December) of the southern MAB sub-regional area and a year-round mainline length reduction throughout the MAB, inclusive of that sub-regional area.

Under the status quo alternative, it is estimated that the Atlantic pelagic longline fleet generates an estimated \$24.6 million in revenues. Applying average species weights reported to dealers in 2004 and the average 2006 ex-vessel prices reported by dealers in the MAB region, NMFS estimated the potential change in fishery revenues from the mainline length restriction, depending on the level of compensation in fishing effort, to range from an increase of \$777,747 (full compensation in the number of hooks fished) to a loss of \$819,523 (no compensation in the number of hooks fished), with an estimated loss of \$239,383 with 50 percent compensation in the number of hooks fished. This change in revenues would impact 41 or fewer vessels per year based on current trends in the number of active pelagic longline vessels and the number of vessels that operated in the MAB in 2006. If one assumes that 41 vessels are affected by this restriction, then the estimated annual impact per vessel ranges from an increase of \$18,969 per vessel to a decrease of \$19,988 per vessel, with an estimated decrease of \$5,838 under the most likely scenarios (50 percent compensation in fishing effort).

The economic costs of Alternative 4 were evaluated based upon historical observed catch rates and reported effort in the MAB fishing area only for the period 2002 to 2004. The impact of the closure of the southern region of the MAB from July-December was estimated by assuming no catch in that area, resulting in a total estimated cost of \$770,000. The combined effect of the 6-month closure and the mainline length

restriction through the MAB resulted in an estimated cost of \$1.64 million, reflecting only lost catch and assuming no compensation or redistribution of effort. The reduction in revenues would impact 41 or fewer vessels per year based on the current trends in the number of active pelagic longline vessels and the number of vessels that operated in the MAB in 2006. If one assumes that 41 vessels would be affected by this restriction, then per vessel impacts are estimated to be \$40,000.

Alternative 1 (the no action alternative) and Alternative 2 were not selected because they were not expected to meet the conservation objectives of the proposed rule or the goals in MMPA section 118. Both Alternative 3 and Alternative 4 would meet the objectives of the proposed rule. Alternative 4 was not selected because, although it would meet objectives of the proposed rule, it would likely result in larger economic impacts to small entities than the preferred alternative.

#### References Cited

A complete list of all references cited in this proposed rule can be found on the PLTRT website at <http://www.nmfs.noaa.gov/pr/interactions/trt/teams.htm#pl-trt.htm> and the NMFS Southeast Regional Office website at <http://sero.nmfs.noaa.gov/pr/pr.htm>, and is available upon request from the NMFS Southeast Regional Office in St. Petersburg, FL (see ADDRESSES).

#### List of Subjects in 50 CFR Part 229

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

Dated: June 18, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended as follows:

#### PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

2. In subpart A, § 229.3, paragraphs (t) and (u) are added to read as follows:

#### § 229.3 Prohibitions.

\* \* \* \* \*

(t) It is prohibited to deploy or fish with pelagic longline gear in the Mid-Atlantic Bight unless the vessel:

(1) Complies with the placard posting requirement specified in § 229.36(c); and

(2) Complies with the gear restrictions specified in § 229.36(e).

(u) It is prohibited to deploy or fish with pelagic longline gear in the CHSRA or to transit through the CHSRA with pelagic longline gear onboard unless the vessel is in compliance with the observer and research requirements specified in § 229.36(d).

3. In subpart C, § 229.36 is added to read as follows:

#### § 229.36 Atlantic Pelagic Longline Take Reduction Plan (PLTRP).

(a) *Purpose and scope.* The purpose of this section is to implement the PLTRP to reduce incidental mortality and serious injury of long-finned and short-finned pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery off the U.S. east coast, a component of the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery, as delineated on the MMPA List of Fisheries.

(1) *Persons subject to this section.* The regulations in this section apply to the owner and operator of any vessel that has been issued or is required to be issued an Atlantic HMS tunas, swordfish, or shark permit under § 635.4 or § 635.32 and that has pelagic longline gear onboard as defined under § 635.21(c).

(2) *Geographic scope.* The geographic scope of the PLTRP is the Atlantic federal EEZ off the U.S. East Coast. The regulations specified in paragraphs (b) through (e) of this section apply to all U.S. Atlantic pelagic longline vessels operating in the EEZ portion of the Mid-Atlantic Bight.

(b) *Definitions.* In addition to the definitions contained in the MMPA and §§ 216.3 and 229.2 of this chapter, the following definitions apply.

(1) *CHSRA (Cape Hatteras Special Research Area)* means all waters inside and including the rectangular boundary described by the following lines: 35° N. lat., 75° W. long., 36° 25' N. lat., and 74° 35' W. long.

(2) *Mid-Atlantic Bight* means the area bounded by straight lines connecting the mid-Atlantic states' internal waters and extending to 71° W. long. between 35° N. lat. and 43° N. lat.

(3) *Observer* means an individual authorized by NMFS, or a designated contractor, placed aboard a commercial fishing vessel, to record information on marine mammal interactions, fishing operations, marine mammal life history information, and other scientific data; to collect biological specimens; and to perform other scientific investigations.

(4) *Pelagic longline* has the same meaning as in § 635.2 of this title.

(c) *Marine Mammal Handling and Release Placard.* The placard, "Marine Mammal Handling/Release Guidelines: A Quick Reference for Atlantic Pelagic Longline Gear," must be kept posted inside the wheelhouse and on the working deck. You may contact the NMFS Southeast Regional Office at (727) 824-5312 to request additional copies of the placard.

(d) *CHSRA—(1) Special observer requirements.* If you deploy or fish with pelagic longline gear in the CHSRA or transit through the CHSRA with pelagic longline gear onboard, or intend to do so, you must call NMFS Southeast Fisheries Science Center, 1-800-858-0624, at least 48 hours prior to embarking on your trip. This requirement is in addition to any existing selection and notification requirement for observer coverage by the Pelagic Observer Program. If you are assigned an observer, you must take the observer during that trip. If you do not take the observer, you are prohibited from deploying or fishing with pelagic longline gear in the CHSRA or transiting through the CHSRA with pelagic longline gear onboard. You must comply with all provisions of § 229.7, Monitoring of incidental mortalities and serious injuries. In addition, all provisions of § 600.746, Observers, apply. No waivers will be granted under § 229.7(c)(3) or § 600.746(f). A vessel that would otherwise be required to carry an observer, but is inadequate or unsafe for purposes of carrying an observer and for allowing operation of normal observer functions, is prohibited from deploying or fishing with pelagic longline gear in the CHSRA or transiting through the CHSRA with pelagic longline gear onboard.

(2) *Special research requirements.* In addition to observing normal fishing activities, observers may conduct additional scientific investigations aboard your vessel designed to support the goals of the PLTRP. The observer will inform you of the specific additional investigations that may be conducted during your trip. An observer may direct you to modify your fishing behavior, gear, or both. Instead of carrying an observer, you may be required to carry and deploy gear provided by NMFS or an observer or modify your fishing practices. By calling in per § 229.36(d)(1), you are agreeing to take an observer. You are also acknowledging you are both willing and able to participate in research, as per this paragraph, in the CHSRA consistent with the PLTRP without any compensation. If you are assigned any

special research requirements, you must participate in the research for the duration of the assignment. If you do not participate in the research, you are prohibited from deploying or fishing with pelagic longline gear in the CHSRA or transiting through the CHSRA with pelagic longline gear onboard.

(e) *Gear restrictions.* No person may deploy a pelagic longline that exceeds 20 nautical miles (nm) (37.04 km) in length in the Mid-Atlantic Bight, including in the CHSRA, unless they have a written letter of authorization from the Director, NMFS Southeast Fishery Science Center to use a pelagic

longline exceeding 20 nm in the CHSRA in support research for reducing bycatch of marine mammals in the pelagic longline fishery.

[FR Doc. E8-14274 Filed 6-23-08; 8:45 am]

**BILLING CODE 3510-22-S**

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.

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### Public Meetings of Advisory Committee on Beginning Farmers and Ranchers

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice of public meetings.

**SUMMARY:** We are issuing this notice to advise the public that meetings of the Advisory Committee on Beginning Farmers and Ranchers (Committee) will be held to discuss various beginning farmer and rancher issues.

**DATES:** The public meetings will be held July 9–10, 2008. The first meeting, on July 9, 2008, will begin at 8 a.m. and end by 5:30 p.m. The second meeting, on July 10, 2008, will begin at 8 a.m. and end by 4 p.m. All times noted are Eastern Standard Time (EST). See

**SUPPLEMENTARY INFORMATION** for oral presentation submission date.

**ADDRESSES:** All meetings will be held at the Sofitel Hotel, 806 15th Street, Washington, DC, (202) 730–8800.

Written requests to make oral presentations must be sent to: Mark Falcone, Designated Federal Official for the Advisory Committee on Beginning Farmers and Ranchers, Farm Service Agency, U.S. Department of Agriculture (USDA), 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250–0522; telephone (202) 720–1632; FAX (202) 690–1117; *e-mail*: [mark.falcone@wdc.usda.gov](mailto:mark.falcone@wdc.usda.gov). Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

**FOR FURTHER INFORMATION CONTACT:**

Mark Falcone at (202) 720–1632.

**SUPPLEMENTARY INFORMATION:** Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L. 102–554) required the Secretary of Agriculture (the Secretary) to establish the Committee for

the purpose of advising the Secretary on the following:

(1) The development of a program of coordinated financial assistance to qualified beginning farmers and ranchers, required by section 309(i) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929) (under the program, Federal and State beginning farmer programs provide financial assistance to beginning farmers and ranchers);

(2) Methods of maximizing the number of new farming and ranching opportunities created through the program;

(3) Methods of encouraging States to participate in the program;

(4) The administration of the program; and

(5) Other methods of creating new farming or ranching opportunities.

The Committee meets annually and all meetings are open to the public. The duration of the Committee is indefinite. Earlier meetings of the Committee, beginning in 1999, provided an opportunity for members to exchange ideas on ways to increase opportunities for beginning farmers and ranchers. Members discussed various issues and drafted numerous recommendations, which were provided to the Secretary.

Agenda items for the July 2008 meetings include:

(1) Discussions concerning provisions of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234, May 22, 2008) (also referred to commonly as the 2008 Farm Bill);

(2) USDA's response to the recommendations made in the September 2007 Government Accountability Office report entitled: "BEGINNING FARMERS: Additional Steps Needed to Demonstrate the Effectiveness of USDA Assistance";

(3) A presentation of a national project focused on farmland access, tenure, and succession funded by USDA's Cooperative State Research, Education, and Extension Service;

(4) Brief presentations by several Advisory Committee members on: The Wisconsin School for Beginning Dairy and Livestock Farmers; innovative opportunities for beginning farmers and ranchers in Nebraska; and new immigrant farming initiatives; and

(5) Status of previous committee recommendations and drafting new recommendations.

Attendance is open to all interested persons, but limited to space available. Anyone wishing to make an oral statement should submit a request in writing (letter, fax, or e-mail) to Mark Falcone at the above address. Statements should be received no later than July 3, 2008. Requests should include the name and affiliation of the individual who will make the presentation and an outline of the issues to be addressed. The floor will be open to oral presentations beginning at 1:15 p.m. EST on July 9, 2008.

Oral Statements will be limited to 5 minutes, and presenters will be approved on a first-come, first-served basis.

Persons with disabilities who require special accommodations to attend or participate in the meetings should contact Mark Falcone by July 3, 2008.

Signed in Washington, DC, on June 19, 2008.

**Thomas B. Hofeller,**

*Acting Administrator, Farm Service Agency.*

[FR Doc. E8–14229 Filed 6–23–08; 8:45 am]

**BILLING CODE 3410–05–P**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Revision of Land Management Plan for the George Washington National Forest, Virginia and West Virginia

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of adjustment for resuming the land management plan revision process

**SUMMARY:** The USDA, Forest Service is resuming preparation of the George Washington National Forest revised land management plan as directed by the National Forest Management Act (NFMA). Preparation of the revised plan was halted when the 2005 Forest Service planning rule was enjoined. A new planning rule (36 CFR Part 219) was adopted on April 21, 2008 allowing the planning process to be resumed. This notice resumes the plan revision process under the new 2008 planning rule. This notice also provides:

1. An estimated schedule for the planning process;
2. Request for additional public comments on the agency's draft Comprehensive Evaluation Report, and how the public can comment;

3. A list of documents available and how to get them;

4. Who to contact for more information.

**DATES:** This notice is effective on June 24, 2008. Comments on the draft Comprehensive Evaluation Report are requested to be postmarked or received by August 8, 2008. A series of public meetings will resume beginning in July 2008. The dates, times and locations of these meetings will be posted at our Internet Web site: <http://www.fs.fed.us/r8/gwj/>. This information can also be obtained from the contact information below. More detailed information on the proposed schedule is in the Supplementary Information Section.

**ADDRESSES:** Written comments on the need for change are being accepted. Send written comments to George Washington Plan Revision, George Washington & Jefferson National Forests, 5162 Valleypointe Parkway, Roanoke, Virginia 24019-3050. Electronic comments should include "GW Plan Revision" in the subject line and be sent to: [comments-southern-georgewashington-jefferson@fs.fed.us](mailto:comments-southern-georgewashington-jefferson@fs.fed.us).

Additional information on the GWNF Forest Plan is available at: <http://www.fs.fed.us/r8/gwj/>.

**FOR FURTHER INFORMATION CONTACT:** Ken Landgraf, Planning Staff Officer, or JoBeth Brown, Public Affairs Officer, George Washington & Jefferson National Forests, (540) 265-5100.

**SUPPLEMENTARY INFORMATION:** Notification of initiation of plan revision process for the George Washington National Forest revised land management plan was provided in the **Federal Register** on February 15, 2007 [72 FR 7390]. The plan revision was initiated under the planning procedures contained in the 2005 Forest Service planning rule (36 CFR 219 (2005)). On March 30, 2007, the federal district court for the Northern District of California enjoined the Forest Service from implementing and using the 2005 planning rule until the agency provided notice and comment and conducted an assessment of the rule's effects on the environment and completed consultation under the Endangered Species Act. Revision of the George Washington National Forest revised land management plan under the (36 CFR 219 (2005)) rule was suspended in response to the injunction. On April 21, 2008 the Forest Service adopted a new planning rule. This rule (36 CFR 219 (2008)) was adopted following completion of an environmental impact statement and consultation under the Endangered Species Act. This new planning rule explicitly allows the

resumption of plan revisions started under the previous rule (36 CFR 219 (2005)) based on a finding that the revision process conforms to the new planning rule (36 CFR 219.14(b)(3)(ii)).

Prior to injunction of the 2005 planning rule the George Washington National Forest had developed a draft Comprehensive Evaluation Report on the need for change. The Forest had just begun to engage the American public in a dialogue on what they thought needed to be changed from the 1993 revised Forest Plan. Only one series of public meetings had occurred during March 2007 prior to the injunction.

Based primarily on the discussion above, I find that the planning actions taken prior to April 21, 2008 conform to the planning process of the 2008 planning rule and for that reason the plan revision process does not need to be restarted.

#### The Need for Change

The GWNF Forest Plan was last revised in 1993. Planning regulations require that plans be revised at least every 15 years. The 1993 revision was a major effort that involved the participation of many stakeholders. The purpose of the current revision is to examine management direction that needs to change and determine how best to make those changes.

Based upon new information acquired in the past year, the Forest Service has appended its initial Comprehensive Evaluation Report of February 2007 with social and economic conditions and trends. The George Washington National Forest is resuming its plan revision process by seeking additional public comments on the need to change the 1993 plan.

#### Planning Schedule

After resumption of the planning process, the Forest Service will hold a series of public meetings. The Forest Supervisor will then determine which issues will be carried forward for further analysis in the revision process.

Additional public meetings will then be held throughout the summer and fall of 2008 to discuss development of the Forest Plan components in response to the issues that will be carried forward for further analysis. In early spring of 2009 the Forest Service expects to release a Proposed Forest Plan for formal public review and comment. A notice will be published in the **Federal Register** that will begin an official 90-day comment period on the Proposed Forest Plan. The Forest Service will review the comments, hold additional public meeting(s), and then make any appropriate changes to the Proposed

Forest Plan. Another notice will then be published in the **Federal Register** to begin a 30-day objection period. This is anticipated to be published in the summer or early fall of 2009. After any objections are resolved, the Forest Plan will be approved by the Forest Supervisor.

#### Documents Available for Review

A number of documents are available for review. These are available at the Web site <http://www.fs.fed.us/r8/gwj/>. Additional documents will be added to this site throughout the planning process.

#### How the Public Can Participate in the Planning Process

A series of public meetings will be held beginning in July 2008. The planning process will emphasize those things that need to change from the 1993 Forest Plan. The focus of the current planning regulations is on establishing a collaborative approach to planning. Therefore, the best opportunity for dialogue is to participate in the discussions at the various public meetings to be held throughout the process. These meetings will all be announced on the GWNF Web site. A formal comment opportunity will be provided when the Proposed Forest Plan is completed.

Only parties that participate in the planning process through the submission of written comments can submit an objection pursuant to 36 CFR 219.13(a).

#### Responsible Official

The Forest Supervisor, George Washington & Jefferson National Forests, is the Responsible Official (36 CFR 219.2(b)(1)).

**Authority:** 16 U.S.C. 1600-1614; 36 CFR 219.14; 73 FR 21468, April 21, 2008.

Dated: June 16, 2008.

**Maureen Hyzer,**

*Forest Supervisor.*

[FR Doc. E8-14292 Filed 6-23-08; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### TE-34 Penchant Basin Natural Resources Plan; Terrebonne Parish, LA

**AGENCY:** Natural Resources Conservation Service, Department of Agriculture.

**ACTION:** Notice of 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 Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (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 Penchant Basin Natural Resources Plan (TE-34), Terrebonne Parish, Louisiana.

**FOR FURTHER INFORMATION CONTACT:** Kevin D. Norton, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473-7751.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of the 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, Kevin D. Norton, State Conservationist, has determined that preparation and review of an environmental impact statement is not needed for this project.

The project is expected to creation, protect, and/or restore 675 net acres of emergent marsh over 20 years. The proposed project consists of installing approximately 6,520 feet of foreshore rock dike along the southern bank of Bayou Chene at its intersection with Bayou Penchant, creating 35 acres of marsh along the southern bank of Bayou Chene at its intersection with Bayou Penchant, installing 10-48" corrugated metal pipe with flap gates in Superior Canal at the Mauvais Bois ridge, installing one steel sheetpile weir with a 10 ft. wide boat bay and six flap gated openings at Brady Canal, installing approximately 12,000 feet of bankline maintenance on the north bank of Bayou Decade from Lake Decade to Turtle Bayou, installing approximately 14,000 feet of earthen embankment on the north bank of Bayou Decade from Voss Canal to Lost Lake, and two sheetpile weirs with 10 ft. wide boat bays along the north bank of Bayou Decade.

The Notice of 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 collected during the environmental assessment are on file

and may be reviewed by contacting Kevin D. Norton.

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

**Kevin D. Norton,**

*State Conservationist.*

[FR Doc. E8-14232 Filed 6-23-08; 8:45 am]

**BILLING CODE 3410-16-P**

## ARCTIC RESEARCH COMMISSION

### Meetings

Notice is hereby given that the U.S. Arctic Research Commission will hold its 87th meeting in Fairbanks, AK from June 29 to July 3, 2008. The business session, open to the public, will commence at 10 a.m. on Monday, June 30 and continue throughout the week in conjunction with the Ninth International Permafrost Conference. The Commission will undertake a series of field trips to research facilities in and around Fairbanks.

*The Agenda items include:*

- (1) Call to order and approval of the agenda.
- (2) Approval of the minutes of the 86th meeting.
- (3) Reports from Commissioners.
- (4) Internal Commission business and administration.

The focus of the meeting will be reports and updates on programs and research projects affecting the Arctic.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact person for more information: John Farrell, Executive Director, U.S. Arctic Research Commission, 703-525-0111 or TDD 703-306-0090.

**John Farrell,**

*Executive Director.*

[FR Doc. E8-14048 Filed 6-23-08; 8:45 am]

**BILLING CODE 7555-01-M**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Southeast Region Bycatch Reduction Device Certification Family of Forms.

*OMB Control Number:* 0648-0345.

*Form Number(s):* None.

*Type of Request:* Regular submission.

*Burden Hours:* 1,775.

*Number of Respondents:* 32.

*Average Hours per Response:*

Application/vessel information form and gear specification form, 30 minutes; station sheet bycatch reduction device (BRD) evaluation, condition and fate, and length frequency forms and trip report/cover sheet; 1 minute; independent BRD test, 5 minutes.

*Needs and Uses:* Persons seeking to obtain certification for bycatch reduction devices to be used on shrimp vessels in the Gulf of Mexico or South Atlantic must apply for authorization to conduct tests and submit the test results. The information is needed for NOAA Fisheries Service to determine if the equipment meets the standard that would allow its use in commercial fisheries.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: June 19, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8-14242 Filed 6-23-08; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).  
Title: Northwest Region Gear Identification Requirements.

OMB Control Number: 0648-0352.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 1,782.

Number of Respondents: 548.

Average Hours per Response: 15 minutes.

**Needs and Uses:** The regulations implementing the Pacific Coast Groundfish Fishery Management Plan at 50 CFR 660.382 and 660.383 specify that vessels participating in this fishery are required to mark their fixed gear with an identifying number. This number is used by NOAA, the U.S. Coast Guard, and other agencies for fishery enforcement activities.

**Affected Public:** Business or other for-profit organizations.

**Frequency:** Annually.

**Respondent's Obligation:** Mandatory.

**OMB Desk Officer:** David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: June 19, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8-14243 Filed 6-23-08; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Vessel Identification Requirements.

OMB Control Number: 0648-0355.

Form Number(s): None.

Type of Request: Regular submission.  
Burden Hours: 1,270.

Number of Respondents: 1,693.

Average Hours per Response: 45 minutes.

**Needs and Uses:** The Federally-permitted vessels in the Pacific Coast Groundfish Fishery are required to identify their vessels by displaying their official number. The number is used by NOAA, the U.S. Coast Guard, and other agencies for fishery enforcement activities.

**Affected Public:** Business or other for-profit organizations.

**Frequency:** Annually.

**Respondent's Obligation:** Mandatory.

**OMB Desk Officer:** David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: June 19, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8-14244 Filed 6-23-08; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Vessel and Gear Identification Requirements.

OMB Control Number: 0648-0356.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 6.

Number of Respondents: 8.

Average Hours per Response: 45 minutes for vessel identification and a one-hour placeholder for gear marking.

**Needs and Uses:** Under provisions of Section 204 of the Magnuson-Stevens

Fishery Conservation and Management Act, foreign fishing vessels may be authorized to conduct fishing activities in United States waters. The authorized vessels are required to display vessel identification and to mark any fishing gear not physically and continuously attached to the vessel. This requirement allows enforcement personnel to monitor fishing, at-sea processing, and other related activities to ascertain whether a vessel's observed activities are in accordance with those authorized for that vessel.

**Affected Public:** Business or other for-profit organizations.

**Frequency:** Annually.

**Respondent's Obligation:** Mandatory.

**OMB Desk Officer:** David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: June 19, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8-14245 Filed 6-23-08; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Gear Identification Requirements.

OMB Control Number: 0648-0359.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 1,806.

Number of Respondents: 961.

Average Hours per Response: Traps, 7 minutes; coral rocks, 10 seconds; Spanish mackerel gillnet floats, 20 minutes.



*Needs and Uses:* The participants in certain federally-regulated fisheries in the Southeast Region must mark their fishing gear with the vessel's official identification number or permit number (depending on the fishery) and color code. Harvesters of aquaculture live rock must mark or tag the material deposited. The marking may include the use of geologically distinguishable materials. These requirements aid fishery enforcement activities and gear identification of lost or damaged gear and related civil proceedings.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Annually.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: June 19, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8-14246 Filed 6-23-08; 8:45 am]

BILLING CODE 3510-22-P

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**DEPARTMENT OF COMMERCE**

**U.S. Census Bureau**

**Proposed Information Collection;  
Comment Request; 2008 Company  
Organization Survey**

**AGENCY:** U.S. Census Bureau,  
Commerce.

**ACTION:** Notice.

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**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** To ensure consideration, written comments must be submitted on or before August 25, 2008.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Cynthia M. Wrenn-Yorker, U.S. Census Bureau, Room 8K319, Washington, DC 20233-6100; telephone (301) 763-1383.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The Census Bureau conducts the annual Company Organization Survey (COS) to update and maintain a central, multipurpose Business Register (BR). In particular, the COS supplies critical information on the composition, organizational structure, and operating characteristics of multi-location companies.

*The BR Serves Two Fundamental Purposes*

—First and most importantly, it provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. Essential for this purpose is the BR's ability to identify all known United States business establishments and their parent companies. Further, the BR must accurately record basic business attributes needed to control sampling and enumeration. These attributes include industrial and geographic classifications, and name and address information.

—Second, it provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. The CBP reports present data on number of establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, the District of Columbia, Puerto Rico, counties, and county-equivalents. No other annual or more frequent series of industry statistics provides comparable detail, particularly for small geographic areas.

**II. Method of Collection**

The Census Bureau will conduct the 2008 COS in a similar manner as the 2006 COS. (In 2007 the COS was conducted in conjunction with the 2007 Economic Census to minimize response burden). These collections will direct inquiries to approximately 43,000 multi-establishment companies, which operate over 1.2 million establishments. This panel will be drawn from the BR universe of nearly 200,000 multi-establishment companies, which operate 1.6 million establishments. Additionally, the panel will include approximately 5,000 large single-establishment companies that may have added locations during the year.

The mailing list for the 2008 COS will include a certainty component, consisting of all multi-establishment companies with 250 or more employees, and those multi-establishment companies with administrative record values that indicate organizational changes. A non-certainty component will be drawn from the remaining multi-establishment companies based on employment size. The mailing list also will include entities that are most likely to have added establishments at other locations.

The primary collection medium for the COS is a paper questionnaire; however, many enterprises will submit automated/electronic COS reports. For 2008, electronic reporting will be available to all COS respondents. Companies will receive and return responses by secure Internet transmission. Companies that cannot use the Internet will receive a CD-ROM containing their electronic data. All respondents will be allowed to mail the data via diskette or CD-ROM or submit their response data via the Internet. COS data is identical for all of the reporting modes.

The instrument will include inquiries on ownership or control by domestic or foreign parents, ownership of foreign affiliates, and leased employment. Further, the instrument will list an inventory of establishments belonging to the company and its subsidiaries, and request updates to these inventories, including additions, deletions, and changes to information on Employer Identification Number, name and address, and industrial classification, end-of-year operating status, mid-March employment, first quarter payroll, and annual payroll.

Additionally, the Census Bureau will ask certain questions in the 2008 COS in order to enhance content. We will include questions on leased employees working in the company, questions on

research and development activities performed by the company, and questions on new or significantly improved methods of manufacturing, producing, delivering or distributing goods or services within the company.

### III. Data

*OMB Control Number:* 0607-0444.  
*Form Number:* NC-99001 and NC-99007 (for single-location companies).  
*Type of Review:* Regular submission.  
*Affected Public:* Business and not-for-profit institutions.  
*Estimated Number of Respondents:* 48,000.  
*Estimated Time per Response:* 1.59 hours.  
*Estimated Total Annual Burden Hours:* 127,517.  
*Estimated Total Annual Cost:* \$3,497,791.  
*Respondent's Obligation:* Mandatory.  
*Legal Authority:* Title 13 of U.S.C. Sections 182, 195, 224, and 225.

### IV. Request for Comments

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 19, 2008.

#### Gwellnar Banks,

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8-14241 Filed 6-23-08; 8:45 am]

BILLING CODE 3510-07-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of Issuance of an Export Trade Certificate of Review, Application No. 08-00004.

**SUMMARY:** On June 19, 2008, the U.S. Department of Commerce issued an Export Trade Certificate of Review to Sirius Chemical Group, Inc. ("SCG"). This notice summarizes the conduct for which certification has been granted.

#### FOR FURTHER INFORMATION CONTACT:

Jeffrey C. Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482-5131 (this is not a toll-free number), or by E-mail at [oetca@ita.doc.gov](mailto:oetca@ita.doc.gov).

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2006).

Export Trading Company Affairs ("ETCA") is issuing this notice pursuant to 15 CFR section 325.6(b), which requires the U.S. Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR section 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

#### Description of Certified Conduct

##### Export Trade

##### 1. Products

All products.

##### 2. Services

All services.

##### 3. Technology Rights

Technology rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets that relate to Products and Services.

##### 4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)

Export Trade Facilitation Services, including, but not limited to, professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and

financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and facilitating the formation of shippers' associations.

#### Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

#### Export Trade Activities and Methods of Operation

1. With respect to the sale of Products and Services, licensing of Technology Rights, and provision of Export Trade Facilitation Services, SCG may:

a. Provide and/or arrange for the provision of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights to Export Markets;

d. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers;

g. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in Export Markets;

h. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights; and

i. Enter into contracts for shipping of Products to Export Markets.

2. SCG may exchange information on a one-to-one basis with individual Suppliers regarding that Supplier's inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating export with distributors.

#### Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operations, SCG will not intentionally disclose,

directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. SCG will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standard of Section 303(a) of the Act.

#### Definition

"Supplier" means a person who produces, provides, or sells Products, Services and/or Technology Rights.

#### Protection Provided by Certificate

This Certificate protects SCG and its directors, officers, and employees acting on its behalf, from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

#### Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

#### Other Conduct

Nothing in this Certificate prohibits SCG from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

#### Disclaimer

The issuance of this Certificate of Review to SCG by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion of the Secretary of Commerce or the Attorney General concerning either (a) the viability or quality of the business plans of SCG or (b) the legality of such business plans of SCG under the laws of the United States (other than as

provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct in Export Trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)," 50 FR 1786 (January 11, 1985).

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4100, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 19, 2008.

**Jeffrey Anspacher,**

*Director, Export Trading Company Affairs.*  
[FR Doc. E8-14210 Filed 6-23-08; 8:45 am]

**BILLING CODE 3510-DR-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Export Trade Certificate of Review

**ACTION:** Notice of Application to Amend an Export Trade Certificate of Review Issued to Northwest Fruit Exporters.

**SUMMARY:** Export Trading Company Affairs ("ETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

#### FOR FURTHER INFORMATION CONTACT:

Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or E-mail at [oetca@ita.doc.gov](mailto:oetca@ita.doc.gov).

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982

and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

#### Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a non-confidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be non-confidential. An original and five (5) copies, plus two (2) copies of the non-confidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021-B H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, non-confidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 84-19A12."

A summary of the application for an amendment follows.

#### Summary of the Application

**Applicant:** Northwest Fruit Exporters ("NFE"), 105 South 18th Street, Suite 227, Yakima, Washington 98901.

**Contact:** James R. Archer, Manager to NFE, Telephone: (509) 576-8004.

**Application No.:** 84-19A12.

**Date Deemed Submitted:** June 19, 2008.

The original NFE Certificate was issued on June 11, 1984 (49 FR 24581, June 14, 1984) and last amended on September 17, 2007 (72 FR 54000, September 21, 2007).

**Proposed Amendment:** NFE seeks to amend its Certificate to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Lotus Fruit Packing, Inc., Brewster, Washington; Obert Cold Storage, Zillah, Washington; and Tree To You, LLC, Chelan, Washington; and
2. Delete the following companies as "Members" of the Certificate: Fox Orchards, Mattawa, Washington; Inland—Joseph Fruit Company, Wapato,

Washington; K-K Packing & Storage, L.L.C., Zillah, Washington; Manzaneros Mexicanos De Washington, Yakima, Washington; Orchard View Farms, The Dalles, Oregon; and Peshastin Hi-Up Growers, Peshastin, Washington.

Dated: June 19, 2008.

**Jeffrey Anspacher,**

*Director, Export Trading Company Affairs.*

[FR Doc. E8-14233 Filed 6-23-08; 8:45 am]

**BILLING CODE 3510-DR-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-810]

#### **Stainless Steel Bar from India: Notice of Extension of Time Limit for the Final Results of the 2006-2007 Antidumping Duty Administrative Review**

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

**EFFECTIVE DATE:** June 24, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Devta Ohri, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-3853.

**SUPPLEMENTARY INFORMATION:**

#### **Background**

On February 21, 1995, the Department of Commerce ("Department") published in the **Federal Register** the antidumping duty order on stainless steel bar ("SSB") from India. *See Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan*, 60 FR 9661 (February 21, 1995). On March 28, 2007, the Department published a notice in the **Federal Register** initiating an administrative review of the antidumping duty order on SSB from India for three companies for the period of review ("POR") February 1, 2006, through January 31, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 14516 (February 28, 2007). On March 7, 2008, the Department published its preliminary results of the 2006-2007 antidumping duty administrative review. *See Stainless Steel Bar from India: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 12382 (March 7, 2008); as corrected, *Stainless Steel Bar from India: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 15049 (March 20, 2008). The final results for

this review are currently due no later than July 7, 2008.

#### **Extension of Time Limit of Final Results**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days.

Completion of the final results of the administrative review within the 120-day period in this case is not practicable because, following the preliminary results, the Department issued a comprehensive supplemental questionnaire concerning Sunflag Iron & Steel Co. Ltd.'s ("Sunflag") affiliations. In addition, the Department has received multiple deficiency comments from domestic interested parties. The Department requires additional time to analyze the Sunflag's supplemental questionnaire response and the comments from the domestic interested parties.

Because it is not practicable to complete this review within the time specified under the Act, we are fully extending the time period for issuing the final results of the administrative review in accordance with section 751(a)(3)(A) of the Act. Therefore, the final results are now due no later than September 3, 2008.

This notice is published pursuant to sections 751(a) and 777(i) of the Act.

Dated: June 18, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8-14271 Filed 6-23-08; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-917]

#### **Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances**

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

**SUMMARY:** The Department of Commerce (the Department) has reached a final determination that countervailable

subsidies are being provided to producers/exporters of laminated woven sacks (LWS) from the People's Republic of China (PRC). For information on the estimated subsidy rates, see the "Final Determination" section of this notice.

**EFFECTIVE DATE:** June 24, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Sean Carey, Gene Calvert, or Paul Matino, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3964, (202) 482-3586, or (202) 482-4146, respectively.

**SUPPLEMENTARY INFORMATION:**

#### **Case History**

The following events have occurred since the publication of the preliminary determination in the **Federal Register** on December 3, 2007. *See Laminated Woven Sacks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, in Part; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67893 (December 3, 2007) (*Preliminary Determination*). On December 13, 2007, the Department issued supplemental questionnaires to Zibo Aifudi Plastic Packaging Co., Ltd. (Aifudi) and Shandong Shouguang Jianyuanchun Co., Ltd. and its cross-owned affiliate Shandong Longxing Plastic Products Co., Ltd. (SSJ/SLP).<sup>1</sup> We issued a supplemental questionnaire to the Government of the People's Republic of China (GOC) on December 14, 2007. We received responses to these questionnaires from SSJ/SLP on January 2, 2008, and from the GOC and Aifudi on January 3, 2008. We issued an

<sup>1</sup> SSJ was one of the four mandatory company respondents selected by the Department. *See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, "Respondent Selection"* (July 31, 2007). This memorandum is on file in the Central Records Unit (CRU), Room 1117 of the main Commerce building. Subsequently, we determined that SSJ was cross-owned with SLP (*see Preliminary Determination*, 72 FR at 67900) (December 3, 2007), and for purposes of this final determination, we are referring to these mandatory respondents as SSJ/SLP. The other three mandatory company respondents are: Han Shing Chemical Co., Ltd. (Han Shing Chemical), Ningbo Yong Feng Packaging Co., Ltd. (Ningbo), Shandong Qilu Plastic Fabric Group, Ltd. (Qilu). On October 24, 2007, the Department accepted Aifudi as a voluntary respondent for the investigation pursuant to 19 CFR 351.204(d)(2). *See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, "Voluntary Respondent Selection"* (October 24, 2007). This memorandum is on file in the Department's CRU.

additional supplemental questionnaire to SSJ/SLP on January 11, 2008, and received a response on January 17, 2008. On December 27, 2007, the Department received requests for a hearing from the Laminated Woven Sacks Committee and its individual members, Bancroft Bag, Inc., Coating Excellence International, LLC, Hood Packaging Corporation, Mid-America Packaging, LLC, and Polytex Fibers Corporation (collectively, petitioners), and from the GOC.

Parties submitted timely comments on the Department's analysis of land-use rights as requested in the *Preliminary Determination*. Subsequent to the *Preliminary Determination*, parties also submitted factual information, comments, or clarifying information at several points prior to this final determination based on deadlines for submissions of factual information and/or arguments established by the Department or in accordance with 19 CFR 351.301(a)(1).

On January 22, 2008, the Department decided not to verify SSJ/SLP. See Letter to SSJ/SLP, *Countervailing Duty Investigation: Laminated Woven Sacks from the People's Republic of China* (January 22, 2008) (on file in the Department's CRU). From January 16 through January 25, 2008, we conducted verification of the questionnaire responses submitted by the GOC, including the national, provincial, and local governments, and Aifudi. The Department issued verification reports on February 28, 2008 and March 4, 2008. See Memoranda to the File, *Countervailing Duty Investigation: Laminated Woven Sacks (LWS) from the People's Republic of China: Verification of the Questionnaire Responses Submitted by the Government of the People's Republic of China (GOC) – Central Government; Countervailing Duty Investigation: Laminated Woven Sacks (LWS) from the People's Republic of China: Verification of the Questionnaire Responses Submitted by the Government of the People's Republic of China (GOC) – Provincial and Local Government; and Countervailing Duty Investigation: Laminated Woven Sacks (LWS) from the People's Republic of China: Verification of the Questionnaire Responses Submitted by Zibo Aifudi Plastic Packaging Co., Ltd.*

On April 22, 2008, we issued our post-preliminary determination regarding the new subsidy allegations, which we had decided to investigate on November 2, 2007. See Memorandum to David M. Spooner, Assistant Secretary for Import Administration, *Countervailing Duty Investigation of Laminated Woven Sacks from the People's Republic of China; Post-*

*Preliminary Analysis of New Subsidy Allegations* (April 22, 2008) (*Post-Preliminary Analysis*), on file in the Department's CRU.

We received case briefs from the GOC, Aifudi, and petitioners on May 2, 2008. The same parties submitted rebuttal briefs on May 7, 2008. On May 8, 2008, the GOC's case brief was returned because the Department determined that it contained untimely new factual information, as well as timely filed new factual information related to the Department's *Post-Preliminary Analysis*. The GOC resubmitted its case brief on May 12, 2008 without the untimely filed new factual information. On May 8, 2008 we informed all parties that they had an opportunity to rebut the new factual information submitted by the GOC pertaining to the Department's *Post-Preliminary Analysis*. On May 12, 2008, petitioners submitted factual information to rebut information provided by the GOC. We held a public hearing for this investigation on May 14, 2008.

#### Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is calendar year 2006.

#### Scope of the Investigation

In the Preliminary Determination, we stated that we had received scope comments from petitioners, and that such comments would be addressed in the preliminary determination of the companion antidumping investigation. See Preliminary Determination, 72 FR at 67894. Based on those comments, the Department determined to amend the scope of the investigation and afforded interested parties the opportunity to comment on those changes. See *Laminated Woven Sacks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 73 FR 5801 (January 31, 2008). No parties provided comments, and as such, we are making no changes to the scope as set forth in the preliminary determination in the companion antidumping investigation. See *id.*

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method

either to an exterior ply of plastic film such as biaxially-oriented polypropylene ("BOPP") or to an exterior ply of paper that is suitable for high quality print graphics;<sup>2</sup> printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500.

If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

#### Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), section 701(a)(2) of the Act applies to this investigation. Accordingly, the International Trade Commission (ITC) must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry, or whether such imports materially retard the

<sup>2</sup> "Paper suitable for high quality print graphics," as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

establishment of an industry in the United States. On August 14, 2007, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially retarded by reason of imports from the PRC of Laminated Woven Sacks. See *Laminated Woven Sacks from China*, USITC Pub. 3942, Inv. Nos. 701-TA-450 and 731-TA-1122 (Preliminary) (August 2007).

#### Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised by interested parties in their case briefs and rebuttal briefs on the *Preliminary Determination* and the *Post-Preliminary Analysis*, are discussed in the *Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Determination of Laminated Woven Sacks from the People's Republic of China (Decision Memorandum)*. A list of the subsidy programs and of the issues that parties have raised is attached to this notice as Appendix I. Parties can find a complete discussion of all of the subsidy programs and issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Department's CRU. A complete version of the *Decision Memorandum* is available at <http://www.trade.gov/ia> under the heading "Federal Register Notices." The paper copy and the electronic version of the *Decision Memorandum* are identical in content.

#### Application of Facts Available, Including the Application of Adverse Inferences

For purposes of this final determination, we have relied on facts available and have used adverse inferences to determine the countervailable subsidy rates for the four mandatory company respondents: Han Shing Chemical, Ningbo, Qilu, and SSJ/SLP, in accordance with sections 776(a) and (b) of the Act. In addition, we are also applying facts available with an adverse inference, in part, with respect to our determination of the countervailability of two programs: Government Policy Lending and Government Provision of Inputs for Less Than Adequate Remuneration. A full discussion of our decision to apply adverse facts available is presented in the *Decision Memorandum* in the sections "Application of Facts Available and Use of Adverse Inferences" and in "Analysis of Comments" (Comments 3, 4, 5, 13 and 19).

#### Critical Circumstances

Pursuant to section 705(a)(2) of the Act, in order to find critical circumstances, the Department must find that there are countervailable subsidies that are inconsistent with the World Trade Organization Agreement on Subsidies and Countervailing Measures (the Subsidies Agreement), and that there have been massive imports over a relatively short period (*i.e.*, whether there was a surge in imports). For purposes of this final determination, we are making an affirmative determination of critical circumstances with respect to all four mandatory respondents (Han Shing Chemical, Ningbo, Qilu, and SSJ/SLP). For the voluntary respondent, Aifudi, we are making a negative final determination of critical circumstances because we verified that it has not received any subsidies that are inconsistent with the Subsidies Agreement. For "all others," we have made a negative determination of critical circumstances in accordance with section 705(a)(2) of the Act. For a complete discussion of our critical circumstances determination, see the "Critical Circumstances" section in the *Decision Memorandum*.

#### Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we determine the total countervailable subsidy rates to be:

Producer/Exporter	Net Subsidy Rate
Han Shing Chemical Co., Ltd. (Han Shing Chemical) .....	223.74%
Ningbo Yong Feng packaging Co., Ltd. (Ningbo) .....	223.74%
Shandong Qilu Plastic Fabric Group, Ltd. (Qilu) .....	304.40%
Shandong Shouguang Jianyuan Chun Co., Ltd. (SSJ) / Shandong Longxing Plastic Products Company Ltd. (SLP) .....	352.82%
Zibo Aifudi Plastic Packaging Co., Ltd. (Aifudi) .....	29.54%
All Others .....	226.85%

In accordance with section 705(c)(5)(A)(ii) of the Act, we have determined that the most reasonable method for determining the all others rate is a simple average of the four mandatory respondents' AFA rates and the calculated rate for Aifudi. See *Decision Memorandum* at Comment 21 for a more detailed discussion of the all others rate determination.

#### Suspension of Liquidation

Because we preliminarily determined that critical circumstances existed for

entries of LWS produced/exported by Han Shing Chemical and Ningbo, we instructed U.S. Customs and Border Protection (CBP), in accordance with sections 703(d)(1)(B) and (2) and 703(e)(2)(A) of the Act, to suspend liquidation of entries of LWS produced/exported by Han Shing Chemical and Ningbo which were entered, or withdrawn from warehouse, for consumption on or after December 3, 2007, and to apply the suspension of liquidation to any unliquidated entries entered, or withdrawn from warehouse, for consumption on or after September 4, 2007 (90 days before the date of publication of the *Preliminary Determination*). For all other producers/exporters, we ordered CBP to suspend liquidation for all entries entered, or withdrawn from warehouse, on or after December 3, 2007.

In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered on or after April 1, 2008, but to continue the suspension of liquidation of entries made from Han Shing Chemical and Ningbo from September 4, 2007 through April 1, 2008 and, for all other entries, to continue the suspension of liquidation from December 3, 2007 through April 1, 2008. Now that the Department has reached a final affirmative determination of critical circumstances for Qilu and SSJ/SLP, pursuant to section 705(c)(4)(B) of the Act, we will instruct CBP to apply the previously ordered suspension of liquidation for Qilu and SSJ/SLP retroactively to any unliquidated entries entered, or withdrawn from warehouse, for consumption on or after September 4, 2007 (90 days before the date of publication of the *Preliminary Determination*) and on or before April 1, 2008.

If the ITC issues a final affirmative determination of injury, we will issue a countervailing duty order, reinstate suspension of liquidation under section 706(a) of the Act for all entries, and require a cash deposit of estimated countervailing duties for such entries of merchandise at the rates indicated above. If the ITC determines that material injury, threat of material injury to, or material retardation of, the domestic industry does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

**ITC Notification**

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

**Return or Destruction of Proprietary Information**

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Failure to comply is a violation of the APO.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: June 16, 2008.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

**Appendix I: Decision Memorandum****I. Summary****II. Background****III. Application of Facts Available and Use of Adverse Inferences**

- A. Application of Facts Available, Including the Application of Adverse Inferences
- B. Selection of the Adverse Facts Available

**IV. Critical Circumstances****V. Subsidies Valuation Information**

- A. Attribution of Subsidies and Cross-Ownership
- B. Loan Benchmarks and Discount Rate

**VI. Analysis of Programs**

- A. Programs Determined to Be Countervailable
- B. Program Determined to Be Not Countervailable
- C. Programs Determined to Be Not Used by Aifudi
- D. Programs Determined to Be Terminated

**VII. Analysis of Comments**

*Comment 1:* Application of the Countervailing Duty Law to Non-Market Economy Countries

*Comment 2:* Whether the Department Can Measure Subsidies that have been Alleged to Occur Prior to the Department's Determination to Apply CVD Law to China

*Comment 3:* Whether the Department Should Apply Adverse Facts Available to All Mandatory Respondents

*Comment 4:* Whether the Department Can Find that a Program Has Been Used and Is Countervailable for Non-Cooperating Respondents

*Comment 5:* Whether the Calculated Rates for Aifudi Should be Applied as Adverse Facts Available to the Mandatory Respondents

*Comment 6:* Whether the Department Should Apply Partial Adverse Facts Available to Aifudi

*Comment 7:* Whether the Provision of Electricity for Less Than Adequate Remuneration Is Countervailable

*Comment 8:* Whether the GOC Provision of Land Can Be Countervailed

*Comment 9:* Whether the GOC's Sale of Land-Use Rights is Specific

*Comment 10:* Whether the Department Should Select Either a First-Tier or Third-Tier Benchmark for the Provision of Land-Use Rights for Less Than Adequate Remuneration

*Comment 11:* Whether the Department Can Lawfully Apply an External Benchmark for the Provision of Land-Use Rights for Less than Adequate Remuneration

*Comment 12:* Whether the Provision of Petrochemical Inputs for Less Than Adequate Remuneration by SOEs is Countervailable

*Comment 13:* Whether SOEs Distort the Market in the PRC

*Comment 14:* Alternative Benchmark for the Provision of Petrochemical Inputs for Less Than Adequate Remuneration

*Comment 15:* Whether the Department Can Use Data from the World Trade Atlas to Determine a Benchmark for Petrochemical Inputs

*Comment 16:* Whether the Sale of Petrochemical Inputs is Consistent with Market Principles

*Comment 17:* Whether the Department Should Make an Adjustment for Freight in the Benchmark for Petrochemical Inputs

*Comment 18:* Whether the GOC Provides Government Policy Lending to the LWS Industry

*Comment 19:* Whether the Department May Countervail the Policy Lending Program as Adverse Facts Available

*Comment 20:* The Appropriate Benchmark to Use for the Policy Lending Program

*Comment 21:* The Determination of the All Others Rate

**VIII. Recommendation**

[FR Doc. E8-14256 Filed 6-23-08; 8:45 am]

BILLING CODE 3510-DS-S

**DEPARTMENT OF COMMERCE****International Trade Administration**

[C-570-915]

**Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination**

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

**SUMMARY:** The Department of Commerce (the "Department") has made a final determination that countervailable subsidies are being provided to producers and exporters of light-walled rectangular pipe and tube ("LWR") from the People's Republic of China ("PRC"). For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section, below.

**EFFECTIVE DATE:** June 24, 2008./P≤

**FOR FURTHER INFORMATION CONTACT:** Shane Subler, or Damian Felton, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0189, or (202) 482-0133 respectively.

**Petitioner**

The Petitioners in this investigation are the Allied Tube & Conduit, Atlas Tube, Bull Moose Tube, California Tube and Steel, EXLTUBE, Hannibal Industries, Leavitt Tube, Maruichi American Corporation, Searing Industries, Southland Tube, Vest, Inc. Welded Tube and Western Tube (collectively, "Petitioners").

**Period of Investigation**

The period for which we are measuring subsidies, or period of investigation, is January 1, 2006, through December 31, 2006.

**Case History**

The following events have occurred since the announcement of the preliminary determination published in the **Federal Register** on November 30, 2007. See *Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Affirmative Countervailing Duty*

*Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67703 (Nov. 30, 2007) (“*Preliminary Determination*”).

On December 5, 2007, supplemental questionnaires were issued to the Government of the People’s Republic of China (“GOC”); Kunshan Lets Win Steel Machinery Co., Ltd. (“Lets Win”); and Zhangjiagang Zhongyuan Pipe-making Co., Ltd. and its affiliates, Jiangsu Zhongjia Steel Co., Ltd.; Zhangjiagang Zhongxin Steel Product Co., Ltd.; Zhangjiagang Baoshuiqu Jiaqi International Business Co.; and Jiangsu Qiyuan Group Co., Ltd. (“collectively ZZ Pipe”). We received responses to these questionnaires from Lets Win on December 18, 2007, from ZZ Pipe on December 26, 2007, and from the GOC on December 28 and December 31, 2007.

On December 27, 2007, the Department published an *Amended Affirmative Preliminary Determination* to correct a significant ministerial error in the *Preliminary Determination*. See *Light-walled Rectangular Tube and Pipe from the People’s Republic of China: Notice of Amended Affirmative Preliminary Countervailing Duty Determination*, 72 FR 73322 (Dec. 27, 2007) (“*Amended Preliminary Determination*”).

The GOC and ZZ Pipe submitted factual information regarding the GOC’s provision of land within various deadlines set by the Department subsequent to the *Preliminary Determination* for submissions of factual information and/or arguments.

From January 7 through January 18, 2008, we conducted verification of the questionnaire responses submitted by the GOC, Lets Win, and ZZ Pipe.

On April 21, 2008, we issued our post-preliminary determination regarding the provision of land for less than adequate remuneration. See Memorandum to David M. Spooner, Assistant Secretary for Import Administration, entitled *Post-Preliminary Analysis for the Provision of Land For Less Than Adequate Remuneration*, dated April 21, 2008, which is on file in the Central Records Unit (“CRU”).

We received case briefs from the GOC and Guangdong Walsall Steel Pipe Industrial Co., Ltd. (“GWSP”) and Petitioners on April 30, 2008. Rebuttal briefs were submitted by the GOC, GWSP and Petitioners on May 5, 2008, and by Lets Win on May 6, 2008. A hearing for this investigation was held on May 9, 2008.

### Scope of the Investigation

The merchandise that is the subject of this investigation is certain welded carbon-quality light-walled steel pipe and tube, of rectangular (including square) cross section (LWR), having a wall thickness of less than 4mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this investigation is currently classified under the Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

### Injury Test

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Tariff Act of 1930, as amended, (“the Act”), section 701(a)(2) of the Act applies to this investigation. Accordingly, the International Trade Commission (“ITC”) must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to a U.S. industry. On August 28, 2007, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from China of LWR. See *ITC Affirmative Preliminary Determination*, 72 FR 49310 (August 28, 2007).

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the *Decision Memorandum*, which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the

issues that parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

### Use of Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply “facts otherwise available” if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b)



of the Act also authorizes the Department to use as adverse facts available (“AFA”) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.” See *Statement of Administrative Action* (“SAA”) accompanying the Uruguay Round Agreements Act, attached to H.R. Rep. No. 103–316, Vol. I at 870 (1994), reprinted in 1994 U.S.C.A.N. 3773, 4163 (“SAA”). Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. See SAA at 869.

The Department has concluded that it is appropriate to base the final determination for Qingdao Xiangxing Steel Pipe Co., Ltd. (“Qingdao”) on adverse facts available. Qingdao did not respond to the Department’s requests on August 7 and October 24, 2007, to respond to the CVD questionnaire. By failing to submit a response to the Department’s CVD questionnaire, Qingdao did not cooperate to the best of its ability in this investigation. Consequently, in selecting from among the facts available, the Department has determined that an adverse inference is warranted, pursuant to section 776(b) of the Act to ensure that Qingdao will not obtain a more favorable result than had it fully complied with our request in this investigation. Thus, our final determination for Qingdao is based on total AFA.

We have also concluded that it is appropriate to apply adverse facts available to determine the percentage of hot-rolled steel production accounted for by state-owned enterprises. Specifically, the GOC reported that the China Iron and Steel Association

(“CISA”) determined the ownership structure of certain hot-rolled steel producers. Subsequently, we learned that the reported ownership structures were developed by the GOC’s legal counsel, not by CISA as the GOC claimed. Therefore, the GOC misrepresented the source of the reported ownership structure of hot-rolled steel producers.

Consequently, we find that the GOC did not act to the best of its ability because they failed to properly disclose how the reported ownership structures of CISA members were obtained. In misrepresenting how the information was obtained, the GOC did not provide the Department with “full and complete answers.” See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003). Instead, the GOC purposefully made a decision to conceal how the information on ownership structure was derived. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the ownership of HRS producers in the PRC.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. It is the Department’s practice to select, as AFA, the highest calculated rate in any segment of the proceeding. See, e.g., *Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review*, 71 FR 66165 (November 13, 2006), and accompanying Issues and Decision Memorandum at “Analysis of Programs” and Comment 1.

The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse “as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.” See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See SAA at 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent’s prior

commercial activity, selecting the highest prior margin “reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.” See *Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990).

Therefore, with respect to Qingdao, for every program based on the provision of goods for less than adequate remuneration, the Department has used ZZ Pipe’s rate for the provision of hot-rolled steel for less than adequate remuneration. For grant programs we are relying on the rate applied to ZZ Pipe in the form of revenue forgone in relation to its purchase of land-use rights. For value added tax (“VAT”) programs, we are unable to utilize company-specific rates from this proceeding because neither respondent received any countervailable subsidies from these subsidy programs. Therefore, for VAT programs, we are applying the highest subsidy rate for any program otherwise listed, which in this instance is ZZ Pipe’s rate for the provision of hot-rolled steel for less than adequate remuneration. Similarly, neither respondent received any countervailable subsidies from loan programs; hence, we are applying the highest subsidy rate for any program otherwise listed, which in this instance is ZZ Pipe’s rate for the provision of hot-rolled steel for less than adequate remuneration. Since we do not have information regarding the location of Qingdao, we are attributing all three loan programs to Qingdao, in the calculation of their AFA rate. In the instant investigation, there is no record evidence indicating that Qingdao did not operate within the provinces at issue in this investigation (i.e., Zhejiang, Liaoning). Consequently, we are including provincial-specific programs in Qingdao’s AFA rate.

Finally, for the six alleged income tax programs pertaining to either the reduction of the income tax rates or the reduction or exemption from income tax, we continue to apply an adverse inference that Qingdao paid no income tax during the period of investigation (i.e., calendar year 2006). The standard income tax rate for corporations in the PRC is 30 percent, plus a 3 percent provincial income tax rate. Therefore, the highest possible benefit for these six income tax rate programs is 33 percent. We are applying the 33 percent AFA rate on a combined basis (i.e., the six programs combined provided a 33 percent benefit). This 33 percent AFA rate does not apply to income tax

deduction or credit programs. For income tax deduction or credit programs, we are applying the highest subsidy rate for any program otherwise listed, which in this instance is ZZ Pipe's rate for the provision of hot-rolled-steel at less than adequate remuneration. For income tax deduction or credit programs, we are applying the highest subsidy rate for any program otherwise listed, which in this instance is ZZ Pipe's rate for the provision of hot-rolled-steel for less than adequate remuneration.

We do not need to corroborate these rates because they are not considered secondary information as they are based on information obtained in the course of this investigation, pursuant to section 776(c) of the Act. See also SAA at 870.

Regarding the application of adverse facts available to the GOC, we have treated companies as state-owned where the GOC did not provide information regarding the companies' ownership. See *Decision Memorandum* at "Analysis of Programs" and Comment 5.

**Suspension of Liquidation**

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for each of the companies investigated, Lets Win, ZZ Pipe and for Qingdao. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an all-others rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. As Qingdao's rate was calculated under section 776 of the Act, it is not included in the all-others rate. In addition, pursuant to 19 CFR 351.204(d)(3), we have excluded Lets Win's rate because it is a voluntary respondent. Consequently, we have assigned ZZ Pipe's rate as the all-others rate.

Exporter/Manufacturer	Net Subsidy Rate
Kunshan Lets Win Steel Machinery Co., Ltd. ....	2.17%
Zhangjiagang Zhongyuan Pipe-making Co., Ltd., Jiangsu Qiyuan Group Co., Ltd. ....	15.28 %
Qingdao Xiangxing Steel Pipe Co., Ltd. ....	200.58%
All-Others .....	15.28%

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed the U.S. Customs and Border Protection ("CBP")

to suspend liquidation of all entries of LWR from the PRC which were entered or withdrawn from warehouse, for consumption on or after November 30, 2007, the date of the publication of the *Preliminary Determination* in the **Federal Register**, except for entries from Lets Win, which had a *de minimis* rate.

On December 27, 2007, the Department issued its *Amended Affirmative Preliminary Determination* in this countervailing duty investigation. In that determination, ZZ Pipe's rate fell below the *de minimis* level. Consequently, we instructed CBP to release any suspended entries and to discontinue the suspension of liquidation for ZZ Pipe. See *Amended Affirmative Preliminary Determination*, 72 FR 73322.

In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for countervailing duty purposes on all shipments of the subject merchandise entered, or withdrawn from the warehouse, for consumption on or after March 29, 2008, but to continue the suspension of liquidation of entries made from November 30, 2007 through March 28, 2008. This did not apply to Lets Win and ZZ Pipe as their entries were not being suspended.

We will issue a countervailing duty order and suspend liquidation for Lets Win and ZZ Pipe as well as reinstate the suspension of liquidation for Qingdao and all other companies under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

**ITC Notification**

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Import Administration.

**Return or Destruction of Proprietary Information**

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order ("APO") of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: June 13, 2008.

**David M. Spooner,**  
Assistant Secretary for Import Administration.

**Appendix**

*List of Comments and Issues in the Decision Memorandum*

*Comment 1:* Application of CVD Law to Non-Market Economies

*Comment 2:* Double Counting/ Overlapping Remedies

*Comment 3:* Requirement to Provide Evidence of Lower Prices

*Comment 4:* Proposed Cutoff Date for Identifying Subsidies

*Comment 5:* Purchases of Hot-rolled Steel by Respondents

*Comment 6:* Whether State-owned Hot-rolled Steel Suppliers are "Authorities"

*Comment 7:* Hot-rolled Steel Benchmark Issues

*Comment 8:* Use of Hot-Rolled Steel to Produce Subject merchandise Shipped to the United States

*Comment 9:* One Supplier Treated as State-owned is Private and the Volume of Hot-Rolled Steel Supplied by Baosteel

*Comment 10:* Land/Financial Contribution

*Comment 11:* Land/Benchmark

*Comment 12:* Discount Rate

*Comment 13:* Provision of Water

*Comment 14:* Government Policy Lending

*Comment 15:* All-Others Rate

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**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-570-916]

**Laminated Woven Sacks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances**

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

**EFFECTIVE DATE:** June 24, 2008.

**SUMMARY:** On January 31, 2008, the Department of Commerce (the "Department") published its preliminary determination of sales at less than fair value ("LTFV") in the antidumping investigation of laminated woven sacks ("LWS") from the People's Republic of China ("PRC"). The period of investigation ("POI") is October 1, 2006, to March 31, 2007. We invited interested parties to comment on our preliminary determination of sales at LTFV. Based on our analysis of the comments we received, we have made changes to our calculations for the mandatory respondents. We determine that LWS from the PRC are being, or are likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Final Determination Margins" section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Javier Barrientos, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2243.

**SUPPLEMENTARY INFORMATION:****Case History**

The Department published its preliminary determination of sales at LTFV on January 31, 2008. See *Laminated Woven Sacks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 73 FR 5801 (January 31, 2008) ("Preliminary Determination").

We issued Aifudi<sup>1</sup> and SSJ<sup>2</sup> additional supplemental questionnaires on January 28, 2008, and January 31, 2008,

respectively. We received Aifudi's response on February 29, 2008. On February 15, 2008, SSJ submitted a letter stating that it was not responding to the questionnaire.

Between March 31 and April 11, 2008, the Department conducted verifications of Aifudi and its constructed export price (CEP) entities. See the "Verification" section below for additional information.

We invited parties to comment on the *Preliminary Determination*. On May 14, 2008, Petitioners and Aifudi filed case briefs. On May 19, 2008, Petitioners<sup>3</sup> and Aifudi submitted rebuttal briefs.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Investigation of Laminated Woven Sacks from the People's Republic of China: Issues and Decision Memorandum," dated June 16, 2008 ("Issues and Decision Memorandum"), which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit ("CRU"), Main Commerce Building, Room 1217, and is accessible on the Web at <http://www.trade.gov/ia>. The paper copy and electronic version of the memorandum are identical in content.

**Changes Since the Preliminary Determination and Amended Preliminary Determination**

Based on our analysis of information on the record of this investigation, and comments received from the interested parties, we have made changes to the margin calculations for Aifudi. For SSJ, see Use of Facts Available section below. For Aifudi, we have determined that printing cylinders are not a factor of production, and should be treated as factory overhead. For further details, see Issues and Decision Memorandum at Comment 1. We have also revalued several of the surrogate values used in the *Preliminary Determination*. The values that were modified for this final determination are the surrogate financial ratios and the wage rate. For further details, see Issues and Decision Memorandum at Comments 2 and 4, and Memorandum to the File from Javier Barrientos, through Alex

Villanueva, Program Manager, AD/CVD Operations, Office 9, and James C. Doyle, Director, AD/CVD Operations, Office 9: Laminated Woven Sacks from the People's Republic of China: Surrogate Values for the Final Determination, dated June 16, 2008 ("Final Surrogate Value Memo").

In addition, we have incorporated, where applicable, post-preliminary clarifications based on verification and made certain clerical error corrections for Aifudi. For further details on these company-specific changes, see Issues and Decision Memorandum at Comments 8 and 9; see also Memorandum to the File from Javier Barrientos, through Alex Villanueva, Program Manager, AD/CVD Operations, Office 9: Laminated Woven Sacks from the People's Republic of China: Analysis of Zibo Aifudi Plastic packaging Co., Ltd., for the Final Determination, dated June 16, 2008 ("Aifudi Final Analysis Memo").

**Scope of Investigation**

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene ("BOPP") or to an exterior ply of paper that is suitable for high quality print graphics;<sup>4</sup> printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric

<sup>1</sup> Zibo Aifudi Plastic Packaging Co., Ltd. ("Aifudi").

<sup>2</sup> Shouguang Jianyuanchun Co., Ltd. ("SSJ").

<sup>3</sup> The Laminated Woven Sacks Committee and its individual members, Bancroft Bags, Inc., Coating Excellence International, LLC, Hood Packaging Corporation, Mid America Packaging, LLC, and Polytex Fibers Corporation.

<sup>4</sup> "Paper suitable for high quality print graphics," as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

#### Use of Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended (“the Act”), provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information,” the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time

limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed “deficient” under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the Department “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission ..., in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.” See also *Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA)*, H.R. Rep. No. 103-316, Vol. 1 at 870 (1994).

For this final determination, in accordance with sections 776(a)(2)(A) through (D) of the Act, we have determined that the use of adverse facts available (“AFA”) is warranted for SSJ because of its refusal to answer the Department’s supplemental questionnaire. See Issues and Decision Memorandum at Comment 7. As total AFA, we are applying the petition rate to SSJ.

#### Verification

As provided in section 782(i) of the Act, we verified the information submitted by Aifudi for use in our final determination. See Aifudi Verification Report. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by respondents.

#### Surrogate Country

In the *Preliminary Determination*, we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) it is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 773(c)(4) of the Act; and (3)

we have reliable data from India that we can use to value the factors of production. See *Preliminary Determination*. For the final determination, we received no comments and made no changes to our findings with respect to the selection of a surrogate country.

#### Separate Rates

In proceedings involving non-market-economy (“NME”) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department’s policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (“Sparklers”), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (“Silicon Carbide”), and Section 351.107(d) of the Department’s regulations. In the *Preliminary Determination*, we found that Aifudi, SSJ, and the separate rate applicants who received a separate rate (“Separate Rate Applicants”) demonstrated their eligibility for separate-rate status. For all the same reasons, in the final determination, we continue to find that the evidence placed on the record of this investigation by Aifudi and the Separate Rate Applicants demonstrate both a *de jure* and *de facto* absence of government control, with respect to their respective exports of the merchandise under investigation, and, thus are eligible for separate rate status. With respect to SSJ, because SSJ refused to answer our supplemental questionnaires and stopped participating in the investigation, its responses, including its eligibility for separate status, were incomplete and could not be verified. Accordingly, we now consider SSJ part of the PRC-wide entity. Moreover, the Department’s application of facts available to SSJ contributes to the application of facts available applied against the PRC-wide entity, as described herein.

#### The PRC-Wide Rate

In the *Preliminary Determination*, the Department found that certain companies and the PRC-wide entity did not respond to our requests information. In the *Preliminary Determination*, we

treated these PRC producers/exporters as part of the PRC-wide entity because they did not demonstrate that they operate free of government control over their export activities. No additional information has been placed on the record with respect to these entities after the *Preliminary Determination*. The PRC-wide entity, including SSJ for this final determination, has not provided the Department with the requested information; therefore, pursuant to sections 776(a)(2)(A) through (D) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate. Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). See also, SAA at 870. We determined that, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity.

Because we begin with the presumption that all companies within

a NME country are subject to government control and because only the companies listed under the “Final Determination Margins” section below have overcome that presumption, we are applying a single antidumping rate - the PRC-wide rate - to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. See, e.g., *Synthetic Indigo from the People’s Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for Aifudi and the Separate Rate Applicants which are listed in the “Final Determination Margins” section below.

**Critical Circumstances**

In the *Preliminary Determination*, we found that there had been massive imports of the subject merchandise over a relatively short period for Aifudi and the Separate Rate Applicants. In addition, we found that there had not been massive imports of the subject merchandise over a relatively short period for SSJ and the PRC-wide entity. In the *Preliminary Determination*, we relied on a comparison period of four months, which was the maximum duration for the information we had available at that time, for determining whether imports of the subject merchandise were massive.

For the final determination, however, we collected an additional three months of data from Aifudi. After analyzing the

additional data, we continue to find that Aifudi and the Separate Rate Applicants had massive imports of LWS over a relatively short period of time. See Memorandum to the File from Javier Barrientos, Senior Case Analyst: Critical Circumstances Data for the Final Determination of Antidumping Duty Investigation of Laminated Woven Sacks from the People’s Republic of China, dated June 16, 2008, at Attachment I (“CC MTF”). In reviewing the data, we find no reason to believe that the HTS categories used in this case are overly broad for this purpose. Additionally, we find that the PRC-wide entity (including SSJ) did not have massive imports of LWS over a relatively short period of time. *Id.*

**Corroboration**

Pursuant to section 776(c) of the Act, we corroborated the petition rate of 91.73 percent by comparing the petition margin to the individual CONNUM margins for Aifudi. See Aifudi Final Analysis Memorandum at Attachment I. We found that since the petition margin of 91.73 percent was within the range of CONNUM margins, we find that the margin of 91.73 percent has probative value. Accordingly, we find that the rate of 91.73 percent is corroborated to the extent practicable within the meaning of section 776(c) of the Act.

**Final Determination Margins**

We determine that the following percentage weighted-average margins exist for the POI:

Exporter	Producer	Weight Average Margin
ZIBO AIFUDI PLASTIC PACKAGING CO., LTD.	ZIBO AIFUDI PLASTIC PACKAGING CO., LTD.	64.28%
POLYWELL INDUSTRIAL CO., a.k.a. FIRST WAY (H.K.) LIMITED	POLYWELL PLASTIC PRODUCT FACTORY	64.28%
ZIBO LINZI WORUN PACKING PRODUCT CO., LTD.	ZIBO LINZI WORUN PACKING PRODUCT CO., LTD.	64.28%
SHANDONG QIKAI PLASTICS PRODUCT CO., LTD.	SHANDONG QIKAI PLASTICS PRODUCT CO., LTD.	64.28%
CHANGLE BAODU PLASTIC CO. LTD.	CHANGLE BAODU PLASTIC CO. LTD.	64.28%
ZIBO LINZI SHUAIQIANG PLASTICS CO. LTD.	ZIBO LINZI SHUAIQIANG PLASTICS CO. LTD.	64.28%
ZIBO LINZI QITIANLI PLASTIC FABRIC CO. LTD.	ZIBO LINZI QITIANLI PLASTIC FABRIC CO. LTD.	64.28%
SHANDONG YOULIAN CO. LTD	SHANDONG YOULIAN CO. LTD	64.28%
ZIBO LINZI LUITONG PLASTIC FABRIC CO. LTD.	ZIBO LINZI LUITONG PLASTIC FABRIC CO. LTD.	64.28%
WENZHOU HOTSON PLASTICS CO. LTD	WENZHOU HOTSON PLASTICS CO. LTD	64.28%
JIANGSU HOTSON PLASTICS CO. LTD.	JIANGSU HOTSON PLASTICS CO. LTD.	64.28%
CANGNAN COLOR MAKE THE BAG	CANGNAN COLOR MAKE THE BAG	64.28%
ZIBO QIGAO PLASTIC CEMENT CO. LTD	ZIBO QIGAO PLASTIC CEMENT CO. LTD	64.28%
PRC-WIDE RATE		91.73%

**Disclosure**

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

**Continuation of Suspension of Liquidation**

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border

Protection (“CBP”) to continue to suspend liquidation of all entries of subject merchandise from the PRC-wide

entity entered, or withdrawn from warehouse, for consumption on or after January 31, 2008, the date of publication of the *Preliminary Determination*. CBP shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above.

The Department continues to find that critical circumstances exist for Aifudi and the Separate Rate Applicants and therefore we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from Aifudi and the Separate Rate Applicants entered, or withdrawn from warehouse, for consumption on or after November 2, 2007, which is 90 days prior to the date of publication of the preliminary determination. CBP shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. These instructions suspending liquidation will remain in effect until further notice.

In accordance with the preliminary affirmative determination of critical circumstances, we instructed CBP to suspend liquidation of all entries of the subject merchandise for Aifudi, which were entered or withdrawn from warehouse, on or after November 2, 2007, which is 90 days prior to January 31, 2008, the date of publication of the Preliminary Determination in the **Federal Register**. Because we do not find critical circumstances for the PRC-wide entity, including SSJ, for this final determination, we will instruct CBP to terminate suspension of liquidation, and release any cash deposits or bonds, on imports with respect to SSJ during the 90 day period prior to the date of publication of the *Preliminary Determination*.

#### ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

#### Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 16, 2008.

**Stephen Claeys,**

*Acting Assistant Secretary for Import Administration.*

#### Appendix I

*Comment 1: Printing Cylinders*  
*Comment 2: Ink Surrogate Value*  
*Comment 3: BOPP Surrogate Value*  
*Comment 4: Labor Surrogate Value*  
*Comment 5: Boxes Surrogate Value*  
*Comment 6: Surrogate Financial Ratios*  
*Comment 7: Total AFA for SSJ*  
*Comment 8: Billing Adjustments*  
*Comment 9: Conversion Factor for Certain Inputs*

[FR Doc. E8-14266 Filed 6-23-08; 8:45 am]

**BILLING CODE 3510-DS-S**

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

[A-201-836]

#### Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico

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

**EFFECTIVE DATE:** (June 24, 2008).

**SUMMARY:** On January 30, 2008, the Department of Commerce (the Department) published its preliminary determination in the investigation of sales at less than fair value in the antidumping duty investigation of light-walled rectangular pipe and tube (LWR) from Mexico. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico*, 73 FR 5515 (January 30, 2008) (*Preliminary Determination*).

The Department has determined that LWR from Mexico is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final margins of sales at less than fair value are listed below in the section entitled "Final Determination of Investigation."

**FOR FURTHER INFORMATION CONTACT:** Patrick Edwards or Judy Lao, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-8029 or (202) 482-7924, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

The preliminary determination in this investigation was published on January 30, 2008. *See Preliminary Determination*. Since then, we have requested that the respondents in this proceeding, Maquilacero S.A. de C.V. (Maquilacero) and Productos Laminados de Monterrey, S.A. de C.V. (PROLAMSA) (collectively, respondents), provide the downstream sales data, regarding their affiliates' sales to the first unaffiliated customer in the comparison market (*i.e.*, Mexico). *See Letter from Angelica L. Mendoza, Program Manager, Office 7, to Maquilacero S.A. de C.V., entitled "Request for Downstream Sales Data," dated January 24, 2008; see also, letter from Angelica L. Mendoza, Program Manager, Office 7, to Productos Laminados de Monterrey, S.A. de C.V., entitled "Request for Downstream Sales Data," dated January 24, 2008.* Maquilacero filed the downstream sales response on behalf of its affiliate on February 6, 2008. PROLAMSA filed the downstream sales response on behalf of its affiliate on February 6, 2008.

We conducted sales and cost verifications of the responses (including the downstream sales responses) submitted by Maquilacero and PROLAMSA. *See Memorandum to the File from Patrick Edwards and Judy Lao, Case Analysts, through Angelica L. Mendoza, Program Manager, Office 7, entitled "Verification of the Sales Responses of Maquilacero S.A. de C.V. in the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico," dated April 11, 2008 (Maquilacero Verification Report); see also Memorandum to the File from Patrick Edwards and Dena Crossland, Case Analysts, through Angelica L. Mendoza, Program Manager, Office 7, entitled "Verification of the Sales*

Responses of Productos Laminados de Monterrey, S.A. de C.V. in the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico," dated April 24, 2008 (PROLAMSA Verification Report), and Memorandum to the File from Patrick Edwards, Case Analyst, through Angelica L. Mendoza, Program Manager, entitled "Verification of Sales Responses of Productos Laminados de Monterrey, S.A. de C.V. and Prolamsa, Inc. in the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico," dated April 24, 2008 (PROLAMSA CEP Verification Report); see also Memorandum to the File through Neal M. Halper, from Gina K. Lee, entitled "Verification of the Cost Response of Productos Laminados de Monterrey, S.A. de C.V. in the Antidumping Investigation of Light-Walled Rectangular Pipe and Tube from Mexico," dated April 15, 2008 (PROLAMSA Cost Verification Report), and Memorandum to the File through Neal M. Halper, from Robert B. Gregor, entitled "Verification of the Cost Response of Maquilacero, S.A. de C.V. in the Antidumping Investigation of Light-Walled Rectangular Pipe and Tube from Mexico," dated April 15, 2008 (Maquilacero Cost Verification Report). All verification reports are on file and available in the Central Records Unit (CRU), Room 1117, of the main Department of Commerce building.

Based on the Department's findings at verification, as well as the minor corrections presented by Maquilacero and PROLAMSA at the start of their respective verifications, we requested respondents to submit revised sales databases. See Letter from Angelica L. Mendoza, Program Manager, Office 7, to Maquilacero S.A. de C.V., dated April 18, 2008; see also Letter from Angelica L. Mendoza, Program Manager, Office 7, to Productos Laminados de Monterrey, S.A. de C.V., dated April 30, 2008. As requested, Maquilacero submitted its revised sales databases on April 28, 2007, and PROLAMSA submitted its revised databases on May 7, 2008.

We have also determined that an allegation of targeted dumping submitted by petitioners on December 26, 2007, and supplemented on January 25, 2008, was inadequate. See Memorandum from Angelica L. Mendoza, Program Manager, Office 7, to Richard O. Weible, Director, Office 7, regarding "Final Analysis on Targeting Dumping," dated April 30, 2008 (Targeted Dumping Memo). Furthermore, with regard to PROLAMSA, we released an additional memorandum in which we explained

the Department's intention to revise certain aspects of the programs used to calculate PROLAMSA's margin at the *Preliminary Determination*, based on the Department's finding of inadvertent errors in the programming language. See Memorandum to the File from Patrick Edwards, Case Analyst, entitled "Intended Changes to the Comparison Market and U.S. Margin Calculation Programs for Productos Laminados de Monterrey, S.A. de C.V. and Revision to Briefing Schedule," dated May 1, 2008 (CM Program Changes Memo). We invited parties to comment on these proposed changes.

Due to the release of the Targeted Dumping Memo and the CM Program Changes Memo subsequent to the release of the verification reports in this investigation, the Department extended the briefing schedule for parties to file case and rebuttal briefs by two days. As such, we received a case brief from petitioners, PROLAMSA, and Maquilacero on May 7, 2008; the same parties filed rebuttal briefs on May 12, 2008. On May 23, 2008, the Department requested that PROLAMSA submit an electronic version of its revised cost database, reflecting the adjustments made to the database for certain minor corrections presented during its cost verification, and which was also filed in hard-copy on the official record on February 27, 2008. See Memorandum to the File from Patrick Edwards, Senior Case Analyst, through Angelica L. Mendoza, Program Manager, Office 7, titled "Request for Cost Database with Post-Cost Verification Corrections – Productos Laminados de Monterrey S.A. de C.V. (PROLAMSA)," dated May 27, 2008. PROLAMSA filed the electronic version of its revised cost database on May 27, 2008.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the "Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico (2006–2007)" (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated June 13, 2008, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised

in this investigation and the corresponding recommendations in the Decision Memorandum which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/>. The paper copy and electronic version of the Decision Memorandum are identical in content.

#### Targeted Dumping

We determined that Petitioners' allegations of targeted dumping failed to provide a reasonable basis to find a pattern of export prices for comparable merchandise that differ significantly among purchasers or regions. We determined further that Petitioners had not demonstrated that any such differences could not be taken into account using the average-to-average methodology, pursuant to section 777A(d)(1)(B) of the Act. We concluded that, for the final determination, we should continue to utilize the average-to-average methodology in calculating the final margins for respondents. For this final determination, we continue to utilize the average-to-average methodology in calculating the final margins for Maquilacero and PROLAMSA for the reasons set forth in the Decision Memorandum.

#### Scope of Investigation

The merchandise that is the subject of this investigation is certain welded carbon quality light walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated:

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

The description of carbon quality is intended to identify carbon quality products within the scope. The welded carbon quality rectangular pipe and tube subject to this investigation is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for

convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

**Period of Investigation**

The period of investigation is from April 1, 2006, through March 31, 2007.

**Verification**

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents.

**Changes since the Preliminary Determination**

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculation for both Maquilacero and PROLAMSA. For a discussion of these changes, see memoranda from Patrick Edwards to The File entitled "Light-Walled Rectangular Pipe and Tube from Mexico - Final Determination of Sales at Less Than Fair Value Analysis Memorandum for Maquilacero S.A. de C.V.," dated June 13, 2008 (Maquilacero Analysis Memo), and "Light-Walled Rectangular Pipe and Tube from Mexico - Final Determination of Sales at Less Than Fair Value Analysis Memorandum for Productos Laminados de Monterrey S.A. de C.V.," dated June 13, 2008 (PROLAMSA Analysis Memo); see also, the memorandum from Robert B. Gregor to Neal M. Halper entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination: Maquilacero S.A. de C.V.," dated June 13, 2008 (Maquilacero Cost Memo), and the memorandum from Gina K. Lee to Neal M. Halper entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination: Productos Laminados de Monterrey S.A. de C.V.," dated June 13, 2008 (PROLAMSA Cost Memo).

**Adverse Facts Available**

For the final determination, we continue to find that, by failing to provide information we requested, certain producers and/or exporters of LWR from Mexico did not act to the best of their ability in responding to our requests for information.<sup>1</sup> Thus, the

<sup>1</sup> These certain producers/exporters are Industrias Monterrey S.A. de C.V., Nacional de Acero S.A. de C.V., PEASA-Productos Especializados de Acero, Tuberias Aspe, and Tuberias y Derivados S.A. de C.V.

Department continues to find that the use of adverse facts available (AFA) is warranted for these companies under sections 776(a)(2) and (b) of the Act. See *Preliminary Determination*, 72 FR 5518 through 5520. As we explained in the *Preliminary Determination*, the Department assigned to these producers and/or exporters the rate of 11.50 percent, which the Department selected as the AFA rate as it was the highest estimated margin alleged in the petition. Further, as discussed in the *Preliminary Determination*, we corroborated the AFA rate pursuant to section 776(c) of the Act. No party to this investigation provided comments regarding the AFA rate. The Department considers the AFA rate to be a fully-corroborated rate and continues to find that 11.50 percent is the appropriate rate to be applied as the AFA rate for purposes of this final determination.

**All-Others Rate**

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins and any margins determined entirely under section 776 of the Act. For this final determination, we have calculated a margin for Maquilacero and PROLAMSA that is above *de minimis*. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(A) of the Act, because other respondents are receiving margins based on adverse facts available, we are using the weighted-average of the dumping margins which we have calculated for Maquilacero and PROLAMSA, *i.e.*, 4.33 percent, as indicated in the "Final Determination of Investigation" section below.

**Final Determination of Investigation**

We determine that the following weighted-average dumping margins exist for the period April 1, 2006, through March 31, 2007:

Manufacturer or Exporter	Weighted-Average Margin (Percentage)
Maquilacero S.A. de C.V. ....	2.92
Productos Laminados de Monterrey S.A. de C.V. (PROLAMSA) .....	5.73
Arco Metal S.A. de C.V. ....	4.33
Hylsa S.A. de C.V. ....	4.33
Industrias Monterrey S.A. de C.V. ....	11.50

Manufacturer or Exporter	Weighted-Average Margin (Percentage)
Internacional de Aceros, S.A. de C.V. ....	4.33
Nacional de Acero S.A. de C.V. PEASA-Productos Especializados de Acero .....	11.50
Perfiles y Herrajes LM, S.A. de C.V. ....	4.33
Regiomontana de Perfiles y Tubos .....	4.33
Talleres Acero Rey S.A. de C.V. ....	4.33
Tuberias Aspe .....	11.50
Tuberia Laguna, S.A. de C.V. ....	4.33
Tuberias y Derivados S.A. de C.V. ....	11.50
All-Others .....	4.33

**Continuation of Suspension of Liquidation**

Pursuant to section 735(c)(1)(B) of the Act and 19 CFR 351.211(b)(1), we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of subject merchandise from Mexico entered, or withdrawn from warehouse, for consumption on or after January 30, 2008, the date of the publication of *Preliminary Determination*, for all producers/exporters, except PROLAMSA. Because we found PROLAMSA to have a *de minimis* margin in the *Preliminary Determination*, we will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from Mexico from PROLAMSA and entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this final determination. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margin, as indicated in the chart above, as follows: (1) the rate for the respondents will be the rates we have determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 4.33 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

**International Trade Commission Notification**

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the



Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

#### Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: June 13, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

#### Appendix

##### General Issues

*Comment 1:* Whether to Deny Home Market Price Adjustments

*Comment 2:* Whether to Accept Petitioners' Targeted Dumping Allegation

*Comment 3:* Whether to Subtract Negative Margins from Positive Margins ("Zeroing")

##### *Maquilacero S.A de C.V.*

*Comment 4:* Whether to Treat Export Rebates as an Adjustment to Sales or Cost of Production

*Comment 5:* Whether to Use Affiliated Party Downstream Sales in the Department's Analysis

##### *Productos Laminados de Monterrey S.A. de C.V.*

*Comment 6:* Whether to Apply Adverse Facts Available to PROLAMSA's Affiliated Party Downstream Sales

*Comment 7:* Whether to Make Changes to the Department's Programming for

Currency Conversions used in its

*Preliminary Determination*

*Comment 8:* Whether to Adjust

Reported Costs of Manufacturing  
*Comment 9:* Whether to Use Corrected Variance Allocation Presented at Verification

*Comment 10:* Whether to Calculate Cost of Manufacturing using Historical Depreciation Costs

[FR Doc. E8-14249 Filed 6-23-08; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-914]

#### Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China

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

**EFFECTIVE DATE:** June 24, 2008.

**SUMMARY:** The Department of Commerce (the Department) has determined that light-walled rectangular pipe and tube (LWR) from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV) as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final dumping margins for this investigation are listed in the "Final Determination Margins" section below. The period covered by the investigation is October 1, 2006, through March 31, 2007 (the POI).

**FOR FURTHER INFORMATION CONTACT:** Jeff Pedersen or Drew Jackson, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-2769 and 482-4406, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department published its preliminary determination of sales at LTFV on January 30, 2008. See *Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 FR 5500 (January 30, 2008) (*Preliminary Determination*). Between February 18,

2008, and February 29, 2008, the Department conducted verifications of Zhangjiagang Zhongyuan Pipe-Making Co., Ltd. (ZZPC) and Kunshan Lets Win Steel Machinery Co. Ltd. (Lets Win). See the "Verification" section below for additional information.

In response to the Department's invitation to comment on the *Preliminary Determination*, on April 2, 2008, the petitioners,<sup>1</sup> ZZPC, and Lets Win filed case briefs. The petitioners and ZZPC filed rebuttal briefs on April 7, 2008.

#### Analysis of Comments Received

All of the issues that were raised in the case and rebuttal briefs that were submitted in this investigation are addressed in the "Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from the People's Republic of China," dated June 13, 2008, which is hereby adopted by this notice (Issues and Decision Memorandum). Appendix I to this notice contains a list of the issues that are addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum, which is a public document, is on file in the Central Records Unit (CRU), at the Main Commerce Building, Room 1117, and is accessible on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the memorandum are identical in content.

#### Changes Since the Preliminary Determination

Based on our analysis of the comments received, we have revised ZZPC's and Lets Win's dumping margins to reflect the following changes:

1. We based ZZPC's dumping margin on total adverse facts available.
2. We used different surrogates to value certain steel inputs and packing materials.
3. We averaged one additional surrogate company's data with those surrogate companies' data used in the *Preliminary Determination* to calculate the surrogate financial ratios.
4. Since the release of the preliminary determination, more recent labor data for the PRC has become available, which we have used in calculating Lets Win's final margin.

<sup>1</sup> The petitioners in this investigation are Allied Tube and Conduit, Atlas Tube, Bull Moose Tube Company, California Steel and Tube, EXLTUBE, Hannibal Industries, Leavitt Tube Company, Maruichi American Corporation, Searing Industries, Southland Tube, Vest Inc., Welded Tube, and Western Tube and Conduit.

For a detailed analysis of the margin calculation for Lets Win, see "Final Determination in the Investigation of Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Analysis Memorandum for Kunshan Lets Win Steel Machinery Co. Ltd.," dated June 13, 2008.

We assigned the separate rates applicants the dumping margin that we calculated for Lets Win.

### Scope of Investigation

The merchandise that is the subject of this investigation is certain welded carbon-quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this investigation is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the investigation is dispositive.

### Critical Circumstances

In the *Preliminary Determination*, the Department found that there was reason to believe or suspect that critical circumstances existed for imports of subject merchandise from the PRC-wide entity, and that these imports were massive during a relatively short period. See sections 733(e)(1)(A)(ii) and (B) of the Act. However, the Department did not preliminarily find that there was reason to believe or suspect that critical circumstances existed for imports of subject merchandise from Lets Win, ZZPC, or the separate-rate companies. See *Preliminary Determination*. No parties commented on the Department's preliminary critical circumstances

determination and we find no reason to reconsider this determination. Therefore, we determine that critical circumstances exist for the PRC-wide entity, but that critical circumstances do not exist for Lets Win, ZZPC, or the separate-rate companies.

### Facts Available and Adverse Facts Available

Section 776(a)(2)(D) of the Act provides that, if an interested party provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Additionally, section 776(b) of the Act permits the Department to use an adverse inference in selecting from among the facts otherwise available if it makes the additional finding that "an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information." The Department was not able to verify the steel consumption quantities reported or the type of steel used by ZZPC. Furthermore, we have determined that the use of adverse inferences is warranted because ZZPC did not act to the best of its ability in reporting the quantity of steel consumed and the type of steel used. Given the importance of the steel input, we have based ZZPC's dumping margin on total adverse facts available. Specifically, we based ZZPC's dumping margin on the highest rate calculated in this investigation, 264.64%. See the accompanying Issues and Decision memorandum at Comment 1 for details. We do not need to corroborate this rate because it is based on information obtained during the course of this investigation rather than secondary information.<sup>2</sup>

### Verification

As provided in section 782(i) of the Act, we conducted verifications of the respondents' information. See the Department's verification reports for ZZPC and Lets Win on file in the CRU. In conducting the verifications, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

<sup>2</sup> Section 776(c) of the Act requires the Department to corroborate secondary information, which the SAA describes as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise." See SAA at 870.

### Surrogate Country

In the *Preliminary Determination*, we selected India as the appropriate surrogate country noting that India was on the Department's list of countries that are at a level of economic development comparable to the PRC and that: (1) India is a significant producer of merchandise comparable to subject merchandise; and, (2) reliable Indian data for valuing factors of production are readily available. See *Preliminary Determination*. While parties commented on this issue (see Issues and Decision Memorandum at Comment 2), for the final determination, we continue to find India to be the appropriate surrogate country.

### Separate Rates

In proceedings involving non-market-economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*); see also section 351.107(d) of the Department's regulations.

In the *Preliminary Determination*, the Department granted separate-rate status to ZZPC, Lets Win, and the separate rate applicants, Wuxi Baishun Steel Pipe Co., Ltd. (Baishun), Guangdong Walsall Steel Pipe Industrial Co., Ltd. (Walsall), Wuxi Worldunion Trading Co., Ltd. (Worldunion), Weifang East Steel Pipe Co., Ltd. (Weifang), and Jiangyin Jianye Metal Products Co., Ltd. (Jiangyin). However, the Department did not grant separate-rate status to Suns International Trading Limited, Liaoning Cold Forming Sectional Company Limited, or Dalian Brolo Steel Tubes Ltd. No parties commented on the Department's separate rate determinations. For the final determination, we continue to find that the evidence placed on the record of this investigation by ZZPC, Lets Win, Baishun, Walsall, Worldunion, Weifang, and Jiangyin demonstrate both a *de jure* and *de facto* absence of government

control, with respect to their respective exports of the merchandise under investigation and thus they are eligible for separate rate status.

**The PRC-Wide Rate**

In the *Preliminary Determination*, the Department considered certain non-responsive PRC producers/exporters to be part of the PRC-wide entity because they did not respond to our requests for information and did not demonstrate that they operated free of government control over their export activities. No additional information regarding these entities has been placed on the record after the *Preliminary Determination*. Since the PRC-wide entity did not provide the Department with requested information, pursuant to section 776(a)(2)(A) of the Act (which covers situations where an interested party withholds requested information), we continue to find it appropriate to base the PRC-wide rate on facts available. Moreover, given that the PRC-wide entity did not respond to our request for information, we continue to find that it failed to cooperate to the best of its ability to comply with a request for information. Thus, pursuant to section 776(b) of the Act, we have continued to use an adverse inference in selecting from among the facts otherwise available. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000) (a case in which the Department applied an adverse inference in determining the Russia-wide rate); see also “*Statement of Administrative Action*” accompanying the URAA, H.R. Rep. No. 103-316, vol. 1, at 870 (1994) (SAA). Specifically, we have assigned the

highest margin calculated in this proceeding to the PRC-wide entity (as we have done for ZZPC). We do not need to corroborate this rate because it is based on information obtained during the course of this investigation rather than secondary information.

Since we begin with the presumption that all companies within a NME country are subject to government control and only the exporters listed under the “Final Determination Margins” section below have overcome that presumption, we are applying a single antidumping rate (i.e., the PRC-wide rate) to all exporters of subject merchandise from the PRC, other than the exporters listed in the “Final Determination Margins” sections. See, e.g., *Synthetic Indigo from the People’s Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000) (applying the PRC-wide rate to all exporters of subject merchandise in the PRC based on the presumption that the export activities of the companies that failed to respond to the Department’s questionnaire were controlled by the PRC government). Thus, the PRC-wide rate will apply to all entries of subject merchandise except for entries of subject merchandise from the exporters that are listed in the “Final Determination Margins” section below (except as noted).

**Combination Rates**

In *Initiation of Antidumping Duty Investigation: Light-Walled Rectangular Pipe and Tube from Republic of Korea, Mexico, Turkey, and the People’s Republic of China*, 72 FR 40274 (July 24, 2007) (*Initiation Notice*), the Department stated that it would calculate combination rates for respondents that are eligible for a

separate rate in this investigation. See *Initiation Notice*. This change in practice is described in Policy Bulletin 05.1, available at <http://ia.ita.doc.gov/>. *Policy Bulletin 05.1*, states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of “combination rates” because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See *Policy Bulletin 05.1*, “Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries.”

**Final Determination Margins**

We determine that the following weighted-average dumping margins exist for the period October 1, 2006, through March 31, 2007:

Exporter / Producer	Weighted-Average Margin
Zhangjiagang Zhongyuan Pipe-Making Co., Ltd./ Zhangjiagang Zhongyuan Pipe-Making Co., Ltd. ....	264.64%
Kunshan Lets Win Steel Machinery Co., Ltd./ Kunshan Lets Win Steel Machinery Co., Ltd. ....	249.12%
Wuxi Baishun Steel Pipe Co., Ltd./ Wuxi Baishun Steel Pipe Co., Ltd. ....	249.12%
Guangdong Walsall Steel Pipe Industrial Co., Ltd./ Guangdong Walsall Steel Pipe Industrial Co., Ltd. ....	249.12%
Wuxi Worldunion Trading Co., Ltd./ Wuxi Hongcheng Bicycle Material Co., Ltd. ....	249.12%
Weifang East Steel Pipe Co., Ltd./ Weifang East Steel Pipe Co., Ltd. ....	249.12%
Jiangyin Jianye Metal Products Co., Ltd./ Jiangyin Jianye Metal Products Co., Ltd. ....	249.12%
PRC-Wide Rate .....	264.64%

**Disclosure**

We will disclose to parties the calculations performed within five days of the date of public announcement of this determination in accordance with 19 CFR 351.224(b).

**Continuation of Suspension of Liquidation**

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all imports of subject merchandise entered or withdrawn from

warehouse, for consumption on or after the following dates: (1) for ZZPC, Lets Win, and the separate rate companies, on or after January 30, 2008, the date of publication of the preliminary determination in the **Federal Register**, (2) for the PRC-wide entity, on or after November 1, 2007, which is 90 days prior to the publication of the

preliminary determination (consistent with our finding that critical circumstances exist for the PRC-wide entity). We will instruct CBP to continue to require a cash deposit or the posting of a bond for all companies based on the estimated weighted-average dumping margins shown above. The suspension of liquidation instructions will remain in effect until further notice.

#### ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise within 45 days of this final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess upon further instruction by the Department antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

#### Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 13, 2008.

**David M. Spooner,**  
Assistant Secretary for Import  
Administration.

#### Appendix I

##### Parties' Comments

*Comment 1:* Whether ZZPC's Dumping Margin Should be Based on Adverse Facts Available

*Comment 2:* The Appropriate Surrogate Country

*Comment 3:* The Appropriate Surrogate Financial Ratios

*Comment 4:* The Appropriate Surrogate Values for Steel Inputs Used by Lets Win

*Comment 5:* The Appropriate Surrogate Value for Hot-Rolled Steel

*Comment 6:* The Appropriate Surrogate Value for Certain Packing Materials

[FR Doc. E8-14252 Filed 6-23-08; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-580-859]

#### Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from the Republic of Korea

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

**SUMMARY:** On January 31, 2008, the U.S. Department of Commerce (the Department) published a preliminary determination in the antidumping duty investigation of light-walled rectangular pipe and tube from the Republic of Korea. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Light-Walled Rectangular Pipe and Tube From the Republic of Korea*, 73 FR 5794 (January 31, 2008) (Preliminary Determination).

We continue to find that light-walled rectangular pipe and tube from the Republic of Korea is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Tariff Act). The estimated margins of sales at LTFV are listed below in the section entitled "Continuation of Suspension of Liquidation."

**EFFECTIVE DATE:** June 24, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6312 or (202) 482-0649, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 31, 2008, the Department published the preliminary determination and invited interested parties to comment. See *Preliminary Determination*. The petitioners in this investigation are Allied Tube and Conduit, Atlas Tube, Bull Moose Tube Company, California Steel and Tube, EXLTUBE, Hannibal Industries, Leavitt Tube Company, Maruichi American Corporation, Searing Industries, Southland Tube, Vest Inc., Welded Tube, and Western Tube and Conduit (Petitioners). The respondents are Ahshin Pipe & Tube, Dong-A Steel Pipe Co. Ltd., Han Gyu Rae Steel, Co., Ltd., HiSteel Co. Ltd., Jinbang Steel Co. Ltd., Joong Won, Kukje Steel Co., Ltd., Miju Steel Mfg. Co. Ltd., Nexteel Co., Ltd. (Nexteel), SeAH Steel Corporation, Ltd., and Yujin Steel Industry Co.

Only Nexteel responded fully to the Section A, B, C, and D questionnaires. (For a complete background concerning the involvement of companies other than Nexteel, see *Preliminary Determination*.) We gave interested parties an opportunity to comment on the preliminary determination. We received a case brief from Petitioners on May 9, 2008, and a rebuttal brief from Nexteel on May 16, 2008. We did not receive a request for a public hearing.

Based upon the results of verification, we have made no changes to the dumping calculations; a revision of Nexteel's databases was, however, required. On December 26, 2007, Petitioners timely filed with the Department an allegation of targeted dumping with respect to Nexteel. Nexteel filed comments regarding Petitioners' allegation on January 3, 2008. Upon review of Petitioners' allegation, the Department determined that further information was needed in order to adequately analyze Petitioners' allegation. The Department issued a supplemental questionnaire to Petitioners on January 14, 2008, requesting that they address deficiencies identified by the Department. See Letter from Richard O. Weible, Director, Office 7, to Petitioners, dated January 14, 2008. Because there was a need for supplemental information regarding the allegation, we did not have sufficient bases for making a finding regarding Petitioners' allegations of targeted dumping prior to the preliminary determination. On January 25, 2008, Petitioners submitted a response to the

Department's supplemental targeted dumping questionnaire.

We conducted a verification of Nexteel's cost of production responses on March 6–12, 2008. See memorandum from Christopher J. Zimpo, Accountant, to the File, entitled "Verification of the Cost Response of Nexteel Co., Ltd. Antidumping Investigation of Light-Walled Rectangular Pipe and Tube From the Republic of Korea," dated April 25, 2008 (*Cost Verification Report*). We conducted a verification of Nexteel's sales responses on March 13–18, 2008. See memorandum from Mark Flessner to the file entitled "Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Verification of Nexteel Co., Ltd.," dated May 1, 2008 (*Sales Verification Report*).

On May 2, 2008, we placed on the record the memorandum from Mark Flessner, Case Analyst, to Richard O. Weible, Office Director, entitled "Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Korea: Final Analysis on Targeting Dumping" (*Targeted Dumping Memorandum*). For a discussion of our findings, see the section below entitled "Targeted Dumping."

We received a case brief from Petitioners on May 9, 2008. We received a rebuttal brief from Nexteel on May 16, 2008. We received no request for a public hearing, so no hearing was held.

#### Period of Investigation

The period of investigation (POI) is April 1, 2006, through March 31, 2007.

#### Scope of Investigation

The merchandise that is the subject of this investigation is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and

tube subject to this investigation is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

#### Fair Value Comparisons

We calculated export price and normal value based on the same methodologies used in the *Preliminary Determination*. We used the home market and U.S. sales databases submitted by Nexteel after verification, which included minor corrections presented at the beginning of verification and findings from verification. See *Sales Verification Report*.

#### Cost of Production and Constructed Value

We calculated the cost of production and constructed value for Nexteel based on the same methodologies used in the *Preliminary Determination*.

#### Verification

As provided in section 782(i)(1) of the Tariff Act, we verified the information submitted by respondents during the periods March 6–12, 2008 (cost) and March 13–18, 2008 (sales) (see *Cost Verification Report* and *Sales Verification Report*). We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

#### Analysis of Comments Received

The issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the memorandum from Stephen Claeys, Deputy Assistant Secretary for Import Administration, to David Spooner, Assistant Secretary for Import Administration, entitled "Issues and Decision Memorandum for Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from the Republic of Korea" (*Issues and Decisions Memorandum*), dated June 13, 2008, which is hereby adopted by this notice. The *Issues and Decisions Memorandum* is on file in the Central Records Unit (CRU), room 1117 of the Department of Commerce main building and can be accessed directly at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the *Issues and Decisions Memorandum* are identical in content. A list of the issues addressed in

the *Issues and Decisions Memorandum* is appended to this notice.

#### Targeted Dumping

We determine that Petitioners' allegations of targeted dumping failed to provide a reasonable basis to find a pattern of export prices for comparable merchandise that differ significantly among purchasers or regions. We determine further that Petitioners had not demonstrated that any such differences could not be taken into account using the average-to-average methodology, pursuant to section 777A(d)(1)(B) of the Tariff Act. We conclude that, for the final determination, we should continue to utilize the average-to-average methodology in calculating the final margins for Nexteel for the reasons set forth in the *Issues and Decisions Memorandum*.

#### Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Tariff Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all imports of subject merchandise from Korea that are entered, or withdrawn from warehouse, for consumption on or after January 31, 2008, the date of publication of the *Preliminary Determination* in the **Federal Register**. CBP shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/Exporter	Weighted-Average Margin (Percentage)
Nexteel Co., Ltd. ....	1.30 (de minimis)
Dong-A Steel Pipe Co. Ltd. ....	30.66
HiSteel Co. Ltd. ....	30.66
Jinbang Steel Co. Ltd. ..	30.66
Joong Won .....	30.66
Miju Steel Mfg. Co., Ltd.	30.66
Yujin Steel Industry Co.	30.66
Ahshin Pipe & Tube .....	30.66
Han Gyu Rae Steel Co., Ltd. ....	30.66
Kukje Steel Co., Ltd. ....	30.66
SeAH Steel Corporation, Ltd. ....	15.98
All others .....	15.98

#### ITC Notification

In accordance with section 735(d) of the Tariff Act, we have notified the International Trade Commission (ITC) of

our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the United States industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

#### Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Tariff Act.

Dated: June 13, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

#### APPENDIX

##### List of Issues

1. Initiation of Targeted Dumping Analysis
2. Use of Offsets in Calculating Dumping Margin

[FR Doc. E8-14255 Filed 6-23-08; 8:45 am]

BILLING CODE 3510-DS-S

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

[A-533-810]

#### Stainless Steel Bar from India: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

**EFFECTIVE DATE:** June 24, 2008.

**FOR FURTHER INFORMATION CONTACT:** Devta Ohri, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-3853.

**SUPPLEMENTARY INFORMATION:**

#### Background

On February 21, 1995, the Department published in the **Federal Register** the antidumping duty order on stainless steel bar ("SSB") from India. *See Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan*, 60 FR 9661 (February 21, 1995). On February 11, 2008, the Department received a timely request from Ambica Steels Limited ("Ambica") for an administrative review of the antidumping duty order on SSB from India. Also, on February 29, 2008, we received a timely request from domestic interested parties Carpenter Technology Corp.; Crucible Specialty Metals, a division of Crucible Materials Corp.; Electralloy Co., a G.O. Carlson, Inc. company; and Valbruna Slater Stainless, Inc., for a review of Venus Wire Industries, Pvt. Ltd. ("Venus"). On March 31, 2008, the Department initiated an administrative review of Ambica and Venus. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review*, 73 FR 16837 (March 31, 2008). On May 16, 2008, Ambica withdrew its request for an administrative review. The administrative review of Venus continues.

#### Scope of the Order

Imports covered by the order are shipments of SSB. SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-to-length flat-rolled products (*i.e.*, cut-to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length,

which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

On May 23, 2005, the Department issued a final scope ruling that SSB manufactured in the United Arab Emirates out of stainless steel wire rod from India is not subject to the scope of this order. *See Memorandum from Team to Barbara E. Tillman, "Antidumping Duty Orders on Stainless Steel Bar from India and Stainless Steel Wire Rod from India: Final Scope Ruling,"* dated May 23, 2005, which is on file in the CRU in room B-099 of the main Department building. *See also Notice of Scope Rulings*, 70 FR 55110 (September 20, 2005).

#### Partial Rescission of Review

Section 351.213(d)(1) of the Department's regulations provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. Ambica withdrew its request for an administrative review on May 16, 2008, which is within the 90-day deadline. No other party had requested a review of Ambica. Therefore, the Department rescinds this administrative review of Ambica, covering the period February 1, 2007, through January 31, 2008 ("2007-2008 AR"). However, we note that the 2007-2008 AR still continues with respect to Venus Wire Industries, Pvt. Ltd.

#### Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification

of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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

Dated: June 18, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8-14268 Filed 6-23-08; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-930]

#### Notice of Postponement of Preliminary Determination in the Antidumping Duty Investigation of Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China

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

**EFFECTIVE DATE:** June 24, 2008.

**FOR FURTHER INFORMATION CONTACT:** Melissa Blackledge or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-3518 or (202) 482-5193, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Postponement of Preliminary Determination

On February 19, 2008, the Department of Commerce (the "Department") initiated the antidumping duty investigation of circular welded austenitic stainless pressure pipe from the People's Republic of China. See *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221 (February 26, 2008) ("*Initiation Notice*"). The *Initiation Notice* stated that, unless postponed, the Department would make its preliminary determination for this antidumping duty investigation no later than 140 days after the date of initiation. Id. at 10224.

On June 10, 2008, the petitioners<sup>1</sup> made a timely request pursuant to 19

CFR 351.205(e) for a 50-day postponement of the preliminary determination in this investigation. The petitioners requested postponement of the preliminary determination because of the "number of input factors, the complexity of the transactions to be investigated, and the difficulty in obtaining certain surrogate values."

There are no compelling reasons to deny the petitioners' request. Therefore, the Department is postponing this preliminary determination under section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the "Act") by 50 days from July 8, 2008 to August 27, 2008. 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) and 777(i)(1) of the Act and 19 CFR 351.205(f)(1).

Dated: June 18, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-14254 Filed 6-23-08; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XI48

#### Endangered and Threatened Species; Take of Anadromous Fish

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

**ACTION:** Applications for one new scientific research permit and one permit modification.

**SUMMARY:** Notice is hereby given that NMFS has received two scientific research permit application requests relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

**DATES:** Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on July 24, 2008.

**ADDRESSES:** Written comments on the applications should be sent to the

Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232-1274. Comments may also be sent via fax to 503-230-5441 or by e-mail to [resapps.nwr@NOAA.gov](mailto:resapps.nwr@NOAA.gov).

#### FOR FURTHER INFORMATION CONTACT:

Blane Bellerud, Portland, OR (ph.: 503-231-2338, Fax: 503-231-2318, e-mail: [Blane.Bellerud@noaa.gov](mailto:Blane.Bellerud@noaa.gov)). Permit application instructions are available from the address above.

#### SUPPLEMENTARY INFORMATION:

##### Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened lower Columbia River (LCR), threatened upper Willamette River (UWR), endangered upper Columbia River (UCR), threatened Snake River (SR) spring/summer (spr/sum), threatened SR fall.

Chum salmon (*O. keta*): threatened Columbia River (CR).

Steelhead (*O. mykiss*): threatened LCR, threatened UWR, threatened middle Columbia River (MCR), threatened SR, endangered UCR, threatened PS.

Coho salmon (*O. kisutch*): threatened LCR, threatened Oregon Coast (OC).

Sockeye salmon (*O. nerka*): endangered SR.

#### Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222-226). NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

#### Applications Received

##### Permit 1318 - Modification 1

Permit 1318 currently authorizes the Oregon Department of Fish and Wildlife (ODFW) to take juvenile UCR Chinook salmon, UCR steelhead, SR steelhead, SR fall-run Chinook salmon, SR spr/sum

<sup>1</sup> The petitioners in this investigation are Bristol Metals, L.P., Felker Brothers Corp., Marcegaglia

USA, Inc., Outokumpu Stainless Pipe Inc., and the United Steel Workers of America.

Chinook salmon, SR sockeye salmon, MCR steelhead, UWR Chinook salmon, UWR steelhead, LCR Chinook salmon, LCR coho salmon, LCR steelhead, and CR chum salmon in the Willamette and Columbia River basins. They are asking to modify the permit so they may be allowed to take OC coho salmon; they also wish to add a seventh project to the permit. The Permit currently contains the following projects: (1) Warm Water Fish Management Surveys; (2) Investigations of Natural Production of Spring Chinook Salmon in the Mohawk System; (3) Genetic Characterization of Rainbow Trout in the Upper Willamette System; (4) Fish Abundance, Population Status, Genetics and Disease Surveys in the Upper Willamette Basin; (5) Native Rainbow and Cutthroat Trout Surveys for Abundance, Size Composition, and Migration Patterns in the Mainstem McKenzie River; (6) Resident Redband Population Estimates in the Deschutes River. The ODFW wishes to add (7) Resident Redband Population Estimates in the Crooked River.

The purpose of the research is to gather information on fish population structure, abundance, genetics, disease occurrences, and species interactions throughout many anadromous fish-bearing basins in Oregon. That information would be used to direct management actions to benefit listed species. Juvenile salmonids would be collected during boat electrofishing operations in the subbasins listed in the project titles above. Some fish would be anesthetized, sampled for length and weight, allowed to recover from the anesthesia, and released; most would only be shocked and allowed to swim away, or be netted and immediately released. The ODFW does not intend to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

#### Permit 13494

The Bonneville Power Administration (BPA) is requesting a 5-year research permit to take LCR Chinook salmon, CR coho salmon, and LCR steelhead during fish collection and transport activities on the Cowlitz River, Washington. The purpose of the research is to determine the fishes' response to being collected and transported around two dams that currently have no downstream fish passage. The activities will take place at a facility that is co-located with the Cowlitz Falls Hydroelectric dam on the upper Cowlitz River in southeastern Washington State.

The fish collection facility is a key component of ongoing efforts to re-establish self-supporting populations of anadromous salmonids in the upper

Cowlitz river basin. The proposed research seeks to (1) improve fish collection efficiency by modifying the operation and physical structure of the fish collection facility, and (2) develop an ongoing transportation program to maintain fish populations. The research would benefit the fish by helping them get access to (and egress from) new habitat that was previously cut off by impassible barriers. Fish collected at the facility would be transported by truck and released in the free-flowing section of the Cowlitz River downstream of the hydropower projects. Scales and other biological samples would be taken from some of the fish. The BPA does not intend to kill any of the fish being studied, but a small percentage of them may be killed as an unintended result of the research.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: June 17, 2008.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E8-14259 Filed 6-23-08; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XH52**

#### Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Donation Program

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

**ACTION:** Notice; selection of an authorized distributor.

**SUMMARY:** NMFS announces the renewal of permits to SeaShare (formerly Northwest Food Strategies) authorizing this organization to distribute Pacific salmon and Pacific halibut to economically disadvantaged individuals under the prohibited species donation (PSD) program. Salmon and halibut are caught incidentally during directed fishing for groundfish with trawl gear

off Alaska. This action is necessary to comply with provisions of the PSD program and is intended to promote the goals and objectives of the North Pacific Fishery Management Council.

**DATES:** The permits are effective from August 15, 2008, through August 15, 2011.

**ADDRESSES:** Copies of the PSD permits for salmon and halibut may be obtained by mail from NMFS, Alaska Region, P. O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska; or via the Internet at the NMFS Alaska Region website at <http://www.fakr.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Becky Carls, 907-586-7228.

#### SUPPLEMENTARY INFORMATION:

##### Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) is managed by NMFS in accordance with the Fishery Management Plan for groundfish of the BSAI and the Fishery Management Plan for groundfish of the GOA (FMPs). These FMPs were prepared by the North Pacific Fishery Management Council under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* Regulations governing the Alaska groundfish fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679. Fishing for halibut in waters in and off Alaska is governed by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea. The International Pacific Halibut Commission (IPHC) promulgates regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary). After approval by the Secretary of State and the Secretary, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62.

Amendments 26 and 29 to the BSAI and GOA FMPs, respectively, authorize a salmon donation program and were approved by NMFS on July 10, 1996; a final rule implementing this program was published in the **Federal Register** on July 24, 1996 (61 FR 38358). The salmon donation program was expanded to include halibut as part of the PSD program under Amendments 50 and 50 to the FMPs that were approved by



NMFS on May 6, 1998. A final rule implementing Amendments 50 and 50 was published in the **Federal Register** on June 12, 1998 (63 FR 32144). Although that final rule contained a sunset provision for the halibut PSD program of December 31, 2000, the halibut PSD program was permanently extended under a final rule published in the **Federal Register** on December 14, 2000 (65 FR 78119). A full description of, and background information on, the PSD program may be found in the preambles to the proposed rules for Amendments 26 and 29, and Amendments 50 and 50 (May 16, 1996, 61 FR 24750, and March 4, 1998, 63 FR 10583, respectively).

Regulations at § 679.26 authorize the voluntary distribution of salmon and halibut taken incidentally in the groundfish trawl fisheries off Alaska, to economically disadvantaged individuals by tax-exempt organizations through an authorized distributor. The Administrator, Alaska Region, NMFS (Regional Administrator), may select one or more tax-exempt organizations to be authorized distributors, as defined by § 679.2, based on the information submitted by applicants under § 679.26. After review of qualified applicants, NMFS must announce the selection of authorized distributor(s) in the **Federal Register** and issue PSD permits to the selected distributor(s).

On March 24, 2008, the Acting Regional Administrator received two applications from SeaShare to renew both its salmon and halibut PSD permits that were issued August 15, 2005 (70 FR 40987, July 15, 2005). Revisions to the applications were received on May 6, 2008. The current salmon and halibut PSD permits issued to SeaShare authorize SeaShare to participate in the PSD program through August 15, 2008.

The Acting Regional Administrator reviewed the applications and determined that they are complete and that SeaShare continues to meet the requirements for a PSD program authorized distributor. As required by § 679.26(b)(2), the Acting Regional Administrator based his selection on the following criteria:

1. *The number and qualifications of applicants for PSD permits.* SeaShare is the only applicant for PSD permits at this time. NMFS has previously approved applications submitted by SeaShare. As of the date of this notice, no other applications have been approved by NMFS. SeaShare has been coordinating the distribution of salmon taken incidentally in trawl fisheries since 1993, and of halibut taken incidentally in trawl fisheries since 1998, under exempted fishing permits

from 1993 to 1996, and under the PSD program since 1996. SeaShare employs independent seafood quality control experts to ensure product quality is maintained by cold storage facilities and common carriers servicing the areas where salmon and halibut donations will take place.

2. *The number of harvesters and the quantity of fish that applicants can effectively administer.* For salmon, 3 shoreside processors, 17 catcher/processor vessels, and 36 catcher vessels currently participate in the PSD program administered by SeaShare. Three shoreside processors and 36 catcher vessels participate in the halibut donation program. SeaShare has the capacity to receive and distribute salmon and halibut from up to 40 processors and the associated catcher vessels. Therefore, it is anticipated that SeaShare has more than adequate capacity for any foreseeable expansion of donations.

In 2005, 2006, and 2007, SeaShare received 483,359 pounds, 171,628 pounds, and 87,330 pounds, respectively, of salmon for distribution to food bank organizations. During these same years, SeaShare received 20,960 pounds, 8,757 pounds, and 16,026 pounds, respectively, of halibut for distribution to food bank organizations. NMFS does not have information to convert accurately the net weights of salmon and halibut to numbers of salmon and numbers of halibut.

3. *The anticipated level of salmon and halibut incidental catch based on salmon and halibut incidental catch from previous years.* The incidental catch of salmon and incidental catch mortality of halibut in the GOA and BSAI trawl fisheries are shown in the following table:

Area Fishery	2006	2007
BSAI Trawl Chinook Incidental Catch	85,914 fish	124,260 fish
BSAI Trawl Other Salmon Incidental Catch	324,601 fish	90,731 fish
GOA Trawl Chinook Incidental Catch	19,158 fish	40,182 fish
GOA Trawl Other Salmon Incidental Catch	4,216 fish	3,368 fish

Area Fishery	2006	2007
BSAI Trawl Halibut Mortality	3,436 mt	3,356 mt
GOA Trawl Halibut Mortality	1,996 mt	1,944 mt

Halibut incidental catch amounts are constrained by an annual prohibited species catch limit in the BSAI and GOA. Future halibut incidental catch levels likely will be similar to those experienced in 2006 and 2007. Salmon prohibited species incidental catch limits are established for the BSAI pollock fisheries that when attained, result in the closure of specified fishing grounds for a specified period of time. An exemption to these closures is provided to participants in an intercooperative agreement to reduce salmon bycatch rates under Amendment 84 to the BSAI FMP (72 FR 61070, October 29, 2007). Salmon incidental catch limits are not established for the GOA. In general, salmon incidental catch amounts tend to be variable between years, making accurate prediction of future incidental take amounts difficult.

4. *The potential number of vessels and processors participating in the groundfish trawl fisheries.* In 2007, 18 shoreside processors, out of a total of 112 permitted, processed catch from trawl vessels. Also, in 2007, 146 trawl catcher vessels out of 205, 40 trawl catcher/processors out of 53, and 9 motherships and stationary floating processors out of 45 participated in the Alaska groundfish trawl fisheries.

The PSD permits are issued to SeaShare for a 3-year period unless suspended or revoked. They may not be transferred; however, they may be renewed following the application procedures in § 679.26.

If the authorized distributor modifies any information on the PSD permit application submitted under § 679.26(b)(1)(xi) or (b)(1)(xiii), the authorized distributor must submit a modified list of participants or a modified list of delivery locations to the Regional Administrator.

These permits may be suspended, modified, or revoked under 15 CFR part 904 for noncompliance with terms and conditions specified in the permit or for a violation of this section or other regulations in 50 CFR part 679.

**Classification**

This action is taken under § 679.26.

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447.

Dated: June 17, 2008.

**Emily H. Menashes**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E8-14275 Filed 6-23-08; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

## DEPARTMENT OF THE INTERIOR

### U.S. Fish and Wildlife Service

RIN 0648-X144

#### Marine Mammals and Endangered Species; National Marine Fisheries Service File No. 10074; U.S. Fish and Wildlife Service File No. PRT-165304

**AGENCIES:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service, Interior.

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Michael Etnier, Ph.D., Box 353100, University of Washington, Seattle, WA 98227 has been issued a permit to import marine mammal specimens for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)427-2521;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0700; phone (206)526-6150; fax (206)526-6426; and U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203 (1-800-358-2104).

**FOR FURTHER INFORMATION CONTACT:** Kate Swails or Amy Sloan, (301)713-2289.

**SUPPLEMENTARY INFORMATION:** On January 25, 2008, notice was published in the *Federal Register* (73 FR 4540) that a request for a scientific research permit to take marine mammals had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of

1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The permit authorizes Dr. Etnier to possess and import/export marine mammal and endangered and threatened species parts (hard and soft) from the orders of Cetacea, Pinnipedia, and Carnivora (sea otter, *Enhydra lutris*). Specimens (teeth, bone, and whiskers) will be obtained from museums and private collections or collected from carcasses of beach stranded animals or federally sponsored subsistence harvests. No animals will be taken or killed for the purposes of this research. The objectives are to combine osteometric, chemical, and genetic analyses to test hypotheses regarding the stability of ecological adaptations among marine mammals in the eastern north Pacific Ocean throughout the Late Holocene.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 18, 2008.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

Dated: June 18, 2008.

**Timothy J. Van Norman,**

*Chief, Branch of Permits Division of Management Authority, U.S. Fish and Wildlife Service.*

[FR Doc. E8-14260 Filed 6-23-08; 8:45 am]

**BILLING CODES 3510-22-S, 4310-55-S**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Patent Prosecution Highway (PPH) Program (Formerly Patent Prosecution Highway (PPH) Pilot Program)

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before August 25, 2008.

**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail:* [Susan.Fawcett@uspto.gov](mailto:Susan.Fawcett@uspto.gov).

Include "0651-0058 comment" in the subject line of the message.

- *Fax:* 571-273-0112, marked to the attention of Susan Fawcett.

- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

- *Federal Rulemaking Portal:* <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Robert A. Clarke, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-7735; or by e-mail at [Robert.Clarke@uspto.gov](mailto:Robert.Clarke@uspto.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The Patent Prosecution Highway (PPH) pilot program was originally established between the United States Patent and Trademark Office (USPTO) and the Japan Patent Office (JPO) on July 3, 2006. The PPH program allows applicants whose claims are determined to be patentable in the office of first filing to have the corresponding application that is filed in the office of second filing be advanced out of turn for examination. At the same time, the PPH program allows the office of second filing to exploit the search and examination results of the office of first filing, which increases examination efficiency and improves patent quality. The USPTO and the JPO agreed at the November 2007 Trilateral Conference to fully implement the PPH program on a permanent basis starting on January 4, 2008.

The USPTO entered into a PPH pilot program with the United Kingdom Intellectual Property Office (UKIPO) on September 4, 2007. Additional PPH pilot programs have also recently been established between the USPTO and the

Canadian Intellectual Property Office (CIPO), the Korean Intellectual Property Office (KIPO), and the Intellectual Property Office of Australia (IPAU).

In addition to the PPH program, the USPTO and the JPO also participate in a work-sharing pilot project called the "New Route." Under the New Route framework, a filing in one member office of this arrangement would be deemed a filing in all member offices. The first office and applicant would be given a 30-month processing time frame in which to make available a first office action and any necessary translations to the second office(s), and the second office(s) would exploit the search and examination results in conducting their own examination. The New Route proposal permits the search and examination results of the first office to be transmitted to the second office(s) according to an internationally coordinated time frame. By allowing the second office to exploit the search and examination results of the first office, the primary benefits of the New Route program would be to reduce overall office workload, minimize duplication of search efforts, and increase examination quality. Because the New Route, as envisioned, would require changes in law in the USPTO and the JPO, the USPTO and the JPO agreed to commence a pilot project to test the New Route concept based on filing

scenarios currently available under existing law in both offices. The New Route pilot project began on January 28, 2008, and will end when the number of requests reaches 50 or at the expiration of one year, whichever occurs first.

This information collection previously included two forms, Request for Participation in the New Route Pilot Program Between the JPO and the USPTO (PTO/SB/10) and Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the (1) JPO or (2) UKIPO and the USPTO (PTO/SB/20), which may be used by applicants to request participation in the programs and to ensure that they meet the program requirements. Since the PPH program with the JPO has been fully implemented, Form PTO/SB/20 has been revised as Form PTO/SB/20JP for use with the JPO and a separate Form PTO/SB/20UK has been created for the ongoing pilot program with the UKIPO. Similar forms have been created for the PPH pilot programs with the CIPO, the KIPO, and the IPAU. These additional PPH pilot program forms are being added to this collection.

**II. Method of Collection**

Requests to participate in the New Route pilot program must be submitted by fax to the Office of the Commissioner for Patents (571-273-0125) to ensure that the request is processed in a timely

manner. Requests to participate in the PPH programs must be submitted online using EFS-Web, the USPTO's web-based electronic filing system.

**III. Data**

*OMB Number:* 0651-0058.  
*Form Number(s):* PTO/SB/10, PTO/SB/20AU, PTO/SB/20CA, PTO/SB/20JP, PTO/SB/20KR, PTO/SB/20UK.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals or households; businesses or other for-profits; and not-for-profit institutions.

*Estimated Number of Respondents:* 1,250 responses per year.

*Estimated Time per Response:* The USPTO estimates that it will take the public approximately 1.5 to 2 hours to gather the necessary information, prepare the form, and submit a completed request to participate in the New Route or PPH program.

*Estimated Total Annual Respondent Burden Hours:* 2,475 hours per year.

*Estimated Total Annual Respondent Cost Burden:* \$767,250 per year. The USPTO expects that the information in this collection will be prepared by attorneys. Using the professional rate of \$310 per hour for associate attorneys in private firms, the USPTO estimates that the total annual respondent cost burden for this collection will be approximately \$767,250 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Request for Participation in the New Route Pilot Program Between the JPO and the USPTO (PTO/SB/10) .....	1.5	50	75
Request for Participation in the Patent Prosecution Highway (PPH) Program Between the JPO and the USPTO (PTO/SB/20JP) .....	2	500	1,000
Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the UKIPO and the USPTO (PTO/SB/20UK) .....	2	250	500
Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the CIPO and the USPTO (PTO/SB/20CA) .....	2	100	200
Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the KIPO and the USPTO (PTO/SB/20KR) .....	2	250	500
Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the IPAU and the USPTO (PTO/SB/20AU) .....	2	100	200
Totals .....	.....	1,250	2,475

*Estimated Total Annual Non-hour Respondent Cost Burden:* \$162,590 per year. There are no capital start-up, maintenance, or postage costs associated with this collection. However, this collection does have annual (non-hour) costs in the form of filing fees and recordkeeping costs.

The filing fee for requests to participate in the New Route or PPH programs is \$130 under 37 CFR 1.17(h). Using the \$130 fee, the USPTO estimates that the total filing fees for

this collection would be \$162,500 per year.

There are also recordkeeping costs associated with submitting the PPH forms in this collection online through EFS-Web. When submitting forms through EFS-Web, the USPTO recommends that customers print and retain a copy of the acknowledgment receipt as evidence of the successful submission. The USPTO estimates that it will take 5 seconds (0.001 hours) to print a copy of the acknowledgment

receipt and that approximately 1,200 submissions in this collection will be filed online, for a total of approximately 1 hour per year. The USPTO expects that these receipts will be printed by paraprofessionals at an estimated rate of \$90 per hour, for a total recordkeeping cost of \$90 per year.

The total (non-hour) respondent cost burden for this collection in the form of filing fees and recordkeeping costs is estimated to be \$162,590 per year.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 17, 2008.

**Susan K. Fawcett,**

*Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.*

[FR Doc. E8-14193 Filed 6-23-08; 8:45 am]

BILLING CODE 3510-16-P

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#### DEPARTMENT OF COMMERCE

##### Patent and Trademark Office

##### Representative and Address Provisions

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before August 25, 2008.

**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail:* [Susan.Fawcett@uspto.gov](mailto:Susan.Fawcett@uspto.gov). Include "0651-0035 comment" in the subject line of the message.

- *Fax:* 571-273-0112, marked to the attention of Susan Fawcett.

- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

- *Federal Rulemaking Portal:* <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information should be directed to Robert A. Clarke, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-7735; or by e-mail to [Robert.Clarke@uspto.gov](mailto:Robert.Clarke@uspto.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Under 35 U.S.C. 2 and 37 CFR 1.31-1.36, a patent applicant or assignee of record may grant power of attorney to a person who is registered to practice before the United States Patent and Trademark Office (USPTO) to act for them in a patent or application. A power of attorney may also be revoked, and a registered practitioner may also withdraw as attorney or agent of record under 37 CFR 1.36. The rules of practice (37 CFR 1.33) also provide for the applicant, assignee, or practitioner of record to supply a correspondence address and daytime telephone number for receiving notices, official letters, and other communications from the USPTO. Maintaining a correct and updated correspondence address is necessary so that official correspondence from the USPTO related to a patent or application will be properly received by the applicant, assignee, or practitioner.

The USPTO's Customer Number practice permits applicants, assignees, and practitioners of record to change the correspondence address or representatives of record for a number of patents or applications with one change request instead of filing separate requests for each patent or application. Customers may request a Customer Number from the USPTO and associate this Customer Number with a correspondence address or a list of registered practitioners. Any changes to the address or practitioner information associated with a Customer Number will be applied to all patents and applications associated with that Customer Number.

The Customer Number practice is optional, in that changes of correspondence address or power of attorney may be filed separately for each patent or application without using a Customer Number. However, a Customer Number associated with the correspondence address for a patent application is required in order to access private information about the application using the Patent Application Information Retrieval (PAIR) system, which is available through the USPTO

Web site. The PAIR system allows authorized individuals secure online access to application status information, but only for patent applications that are linked to a Customer Number. Customer Numbers may be associated with U.S. patent applications as well as international Patent Cooperation Treaty (PCT) applications. The use of a Customer Number is also required in order to grant power of attorney to more than ten practitioners or to establish a separate "fee address" for maintenance fee purposes that is different from the correspondence address for a patent or application.

In addition to the forms offered by the USPTO to assist customers with providing the information in this collection, customers may also format requests using a Customer Number Upload Spreadsheet to designate or change the correspondence address or fee address for a list of patents or applications by associating them with a Customer Number. The Customer Number Upload Spreadsheet must be submitted to the USPTO on a computer-readable diskette or compact disc (CD), accompanied by a signed cover letter requesting entry of the address changes for the listed patents and applications. The spreadsheet and cover letter must be mailed to the USPTO and cannot be filed electronically. Customers may download a Microsoft Excel template with instructions from the USPTO Web site to assist them in preparing the spreadsheet in the proper format. The Customer Number Upload Spreadsheet may not be used to change the power of attorney for patents or applications.

This information collection includes the information necessary to submit a request to grant or revoke power of attorney for a patent application and for a registered practitioner to withdraw as attorney or agent of record for a patent application. This collection also includes the information necessary to request a Customer Number and associate a correspondence address or list of practitioners with this Customer Number, to change the correspondence address or practitioners associated with a Customer Number, and to designate or change the correspondence address or fee address for one or more patents or applications by using a Customer Number.

The USPTO is revising a form in this collection, Request for Withdrawal as Attorney or Agent and Change of Correspondence Address (PTO/SB/83), to allow the practitioner requesting withdrawal to certify that proper notice has been given to the client and that all papers and property to which the client is entitled have been delivered. The

USPTO is also deleting two items from this collection. The Electronic Power of Attorney Forms (EFS) that were previously included in this collection are being deleted due to the retirement of the USPTO's previous electronic filing system (EFS) software in favor of a new Web-based online submission system (EFS-Web). Instead of having to install and use the separate EFS software, forms and other documents may be uploaded and submitted online directly through the USPTO Web site. In addition, the Customer Upload Spreadsheet for PCT Applications is being deleted from this collection because it is no longer in use. Applicants must instead submit a Request to Update a PCT Application With a Customer Number (PTO-2248) for each PCT application to be associated with a Customer Number.

**II. Method of Collection**

By mail, facsimile, hand delivery, or electronically to the USPTO.

**III. Data**

*OMB Number:* 0651-0035.  
*Form Number(s):* PTO/SB/80/81/82/83/84/122/123/124/125 and PTO-2248.  
*Type of Review:* Revision of a currently approved collection.  
*Affected Public:* Individuals or households; businesses or other for-profits; and not-for-profit institutions.  
*Estimated Number of Respondents:* 568,902 responses per year.  
*Estimated Time per Response:* The USPTO estimates that it will take the public approximately 3 minutes (0.05 hours) to 1.5 hours to submit the information in this collection, including the time to gather the necessary information, prepare the appropriate form or document, and submit the completed request.

*Estimated Total Annual Respondent Burden Hours:* 33,357 hours per year.

*Estimated Total Annual Respondent Cost Burden:* \$3,040,630 per year. The USPTO expects that Requests for Withdrawal as Attorney or Agent and the petitions in this collection will be prepared by attorneys, while the other items in this collection will be prepared by paraprofessionals. Using the professional rate of \$310 per hour for associate attorneys in private firms, the USPTO estimates that the respondent cost burden for submitting the withdrawal requests and the petitions will be \$54,250 per year. Using the paraprofessional rate of \$90 per hour, the USPTO estimates that the respondent cost burden for submitting the other items in this collection will be \$2,986,380 per year. The estimated total respondent cost burden for this collection is \$3,040,630 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Power of Attorney to Prosecute Applications Before the USPTO (PTO/SB/80) ....	3 minutes .....	3,500	175
Power of Attorney and Correspondence Address Indication Form (PTO/SB/81) ..	3 minutes .....	426,450	21,323
Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address (PTO/SB/82).	3 minutes .....	1,100	55
Request for Withdrawal as Attorney or Agent and Change of Correspondence Address (PTO/SB/83).	12 minutes .....	750	150
Authorization to Act in a Representative Capacity (PTO/SB/84) .....	3 minutes .....	1,350	68
Petition Under 37 CFR 1.36(a) to Revoke Power of Attorney by Fewer than All the Applicants.	1 hour .....	15	15
Petition to Waive 37 CFR 1.32(b)(4) and Grant Power of Attorney by Fewer than All the Applicants.	1 hour .....	10	10
Change of Correspondence Address for Application or Patent (PTO/SB/122/123).	3 minutes .....	121,727	6,086
Request for Customer Number Data Change (PTO/SB/124) .....	12 minutes .....	2,000	400
Request for Customer Number (PTO/SB/125) .....	12 minutes .....	8,500	1,700
Customer Number Upload Spreadsheet .....	1 hour and 30 minutes .....	2,000	3,000
Request to Update a PCT Application with a Customer Number (PTO-2248) ....	15 minutes .....	1,500	375
<b>Total .....</b>	<b>.....</b>	<b>568,902</b>	<b>33,357</b>

*Estimated Total Annual Non-hour Respondent Cost Burden:* \$257,178. There are no maintenance costs associated with this information collection. However, this collection does have annual (non-hour) cost burden in the form of filing fees, recordkeeping costs, capital start-up costs, and postage costs.

The two petitions in this collection have associated filing fees. The filing fee for both the Petition Under 37 CFR 1.36(a) to Revoke Power of Attorney by Fewer than All the Applicants and the Petition to Waive 37 CFR 1.32(b)(4) and Grant Power of Attorney by Fewer than All the Applicants is currently \$400 (37 CFR 1.17(f)). Using the \$400 fee for these petitions, the USPTO estimates that the total filing fees for this collection would be \$10,000 per year.

There are recordkeeping costs associated with submitting forms in this collection electronically through EFS-Web, the USPTO's online filing system. When submitting forms through EFS-Web, the USPTO recommends that customers print and retain a copy of the acknowledgment receipt as evidence of the successful submission. The USPTO estimates that it will take 5 seconds (0.001 hours) to print a copy of the acknowledgment receipt and that approximately 311,796 of the submissions in this collection will be filed online, for a total of approximately 312 hours per year. The USPTO expects that these receipts will be printed by paraprofessionals at an estimated rate of \$90 per hour, for a total recordkeeping cost of \$28,080 per year.

This collection has capital start-up costs associated with the Customer Number Upload Spreadsheet, which must be submitted to the USPTO on a diskette or CD. This process requires additional supplies, including blank diskettes or recordable CD media and padded envelopes for shipping. The USPTO estimates that the cost of these supplies will be approximately \$2 per submission, for a total capital start-up cost of \$4,000 per year.

The public may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO estimates that the first-class postage cost for a mailed submission will be 83 cents for all items except for the Customer Number Upload Spreadsheet and that approximately 255,106 of the non-spreadsheet items

will be submitted to the USPTO by mail. Due to the additional materials required for Customer Number Upload Spreadsheet submissions, including the diskette or CD and cover letter, the USPTO estimates that the average first-class postage cost for a spreadsheet submission will be \$1.68. The total estimated postage cost for this collection is \$215,098 per year.

The total (non-hour) respondent cost burden for this collection in the form of filing fees, recordkeeping costs, capital start-up costs, and postage costs is estimated to be \$257,178 per year.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 17, 2008.

**Susan K. Fawcett,**

*Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.*

[FR Doc. E8-14194 Filed 6-23-08; 8:45 am]

**BILLING CODE 3510-16-P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Transmittal Nos. 08-42]

#### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601-3740

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-42 with attached transmittal, and policy justification.

June 16, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

**BILLING CODE 5001-06-M**



## DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

JUN 09 2008

In reply refer to:  
USP003039-08

**The Honorable Nancy Pelosi  
Speaker of the House of Representatives  
Washington, DC 20515-6501**

**Dear Madam Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-42, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Israel for defense articles and services estimated to cost \$190 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.**

**Sincerely,**

A handwritten signature in black ink, appearing to read "R. J. Millies".

**Richard J. Millies  
Deputy Director**

**Enclosures:**

- 1. Transmittal**
- 2. Policy Justification**

**Same ltr to:**

**House**

**Committee on Foreign Affairs  
Committee on Armed Services  
Committee on Appropriations**

**Senate**

**Committee on Foreign Relations  
Committee on Armed Services  
Committee on Appropriations**

**Transmittal No. 08-42****Notice of Proposed Issuance of Letter of Offer  
Pursuant to Section 36(b)(1)  
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Israel
- (ii) **Total Estimated Value:**
- |                          |                      |
|--------------------------|----------------------|
| Major Defense Equipment* | \$150 million        |
| Other                    | \$ <u>40 million</u> |
| <b>TOTAL</b>             | <b>\$190 million</b> |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 25 T-6A Texan aircraft, Global Positioning System (GPS) with CMA-4124 GNSSA card and Embedded GPS/Inertial Navigation System (INS) spares, ferry maintenance, tanker support, aircraft ferry services, site survey, unit level trainer, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, contractor technical and logistics personnel services, and other related elements of logistics support.
- (iv) **Military Department:** Air Force (SAB)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none
- (viii) **Date Report Delivered to Congress:** JUN 09 2008

\* as defined in Section 47(6) of the Arms Export Control Act.



## POLICY JUSTIFICATION

### Israel – T-6A Texan Aircraft

The Government of Israel has requested a possible sale of 25 T-6A Texan aircraft, Global Positioning System (GPS) with CMA-4124 GNSSA card and Embedded GPS/Inertial Navigation System (INS) spares, ferry maintenance, tanker support, aircraft ferry services, site survey, unit level trainer, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, contractor technical and logistics personnel services, and other related elements of logistics support. The estimated cost is \$190 million.

Israel's strategic position makes it vital to the United States' interests throughout the Middle East. Our policy has been to promote Middle East peace, support the Israeli commitment to peace with other regional Arab countries, enhance regional stability and promote Israeli readiness and self-sufficiency. It is vital to the U.S. national interest to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

The Israeli Air Force's (IAF) fleet of Zukit aircraft was produced in the early 1960s. The Zukit's high fuel and maintenance costs, and low mission capable rates led to the IAF's decision to procure new trainer aircraft. The T-6A aircraft will reduce training fuel requirements by 66%. The IAF will use these new aircraft to modernize its air force and to improve operational capability in coalition operations and exercises, and contribute to a modern air defense network for the legitimate defense of Israel. Israel will have no difficulty absorbing these aircraft into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be:

Hawker Beechcraft Corporation, Wichita, Kansas  
Pratt & Whitney Corporation, Quebec, Canada and Bridgeport, West Virginia  
Martin Baker, Middlesex, United Kingdom  
Hartzel Propeller, Pique, Ohio  
Canadian Marconi, Broken Arrow, Oklahoma  
L-3 Vertex, Madison, Mississippi

Offset agreements associated with this proposed sale are expected, but at this time the specific offset agreements are undetermined and will be defined in negotiations between the purchaser and contractor.

Implementation of this proposed sale will require multiple trips to Israel involving U.S. Government and contractor representatives for technical reviews/support, program management, and training over a period of up to 15 years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

**DEPARTMENT OF DEFENSE****Office of the Secretary****Base Closure and Realignment**

**AGENCY:** Department of Defense, Office of Economic Adjustment.

**ACTION:** Notice.

**SUMMARY:** This Notice is provided pursuant to section 2905(b)(7)(B)(ii) of the Defense Base Closure and Realignment Act of 1990. It provides a partial list of military installations closing or realigning pursuant to the 2005 Defense Base Closure and Realignment (BRAC) Report. It also provides a corresponding listing of the Local Redevelopment Authorities (LRAs) recognized by the Secretary of Defense, acting through the Department of Defense Office of Economic Adjustment (OEA), as well as the points of contact, addresses, and telephone numbers for the LRAs for those installations. Representatives of state and local governments, homeless providers, and other parties interested in the redevelopment of an installation should contact the person or organization listed. The following information will also be published simultaneously in a newspaper of general circulation in the area of each installation. There will be additional Notices providing this same information about LRAs for other closing or realigning installations where surplus government property is available as those LRAs are recognized by the OEA.

**DATES:** *Effective Date:* June 24, 2008.

**FOR FURTHER INFORMATION CONTACT:** Director, Office of Economic Adjustment, Office of the Secretary of Defense, 400 Army Navy Drive, Suite 200, Arlington, VA 22202-4704, (703) 604-6020.

**Local Redevelopment Authorities (LRAs) for Closing and Realigning Military Installations**

*Tennessee*

*Installation Name:* Chattanooga Volunteer Army Ammunition Plant (VAAP) USARC (Building 228).

*LRA Name:* Chattanooga Local Redevelopment Authority.

*Point of Contact:* Paul Parker, Manager, Hamilton County Real Property Office.

*Address:* 123 East 7th Street, Chattanooga, TN 37402.

*Phone:* (423) 209-6453.

Dated: June 17, 2008.

**Patricia L. Toppings,**  
*OSD Federal Register Liaison Officer,*  
*Department of Defense.*  
[FR Doc. E8-14208 Filed 6-23-08; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE****Office of the Secretary**

**[DoD-2008-OS-0001]**

**Higher Initial Maximum Uniform Allowance Rate; Uniform Allowance**

**AGENCY:** Department of Defense; Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy).

**ACTION:** Notice.

**SUMMARY:** This is the final notice that the Department of Defense (DoD or "the Department"), is establishing a higher initial maximum uniform allowance to procure and issue uniform items for DoD firefighter personnel. This action is pursuant to the authority granted to DoD by Section 591.104 of title 5, Code of Federal Regulations (CFR), which states that an agency may establish one or more initial maximum uniform allowance rates greater than the Governmentwide maximum uniform allowance rate established under 5 CFR 591.103.

**EFFECTIVE DATE:** June 23, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Olson, (703) 901-6840.

**SUPPLEMENTARY INFORMATION:** DoD is implementing a higher initial maximum uniform allowance to procure and issue uniform items for firefighter personnel. This is in accordance with 5 CFR 591.104, which states that an agency may establish one or more initial maximum uniform allowance rates greater than the Governmentwide maximum uniform allowance rate established under 5 CFR 591.103. The current \$400.00 limit has become inadequate to maintain the uniform standards and professional image expected of DoD firefighters. The uniform items for uniformed firefighter personnel include the following items or similar items such as: Work shirts, work pants, work t-shirts, work coat, work cap, belt, dress shirts, dress pants, dress coat, dress shoes, dress hat, dress tie, weather gear, tie clips, tie bars, rank insignia, badges, patches, and name tags. The itemized total uniform cost for the listed items is \$1604.14. Based on these current costs, the Department is increasing the initial maximum uniform allowance for uniformed firefighter personnel to \$1,600.00. A notice of this

planned action was published in the **Federal Register** on March 10, 2008 (73 FR 12711). Since no comments were received by the due date of May 9, 2008, DoD is proceeding with the establishment of the higher initial maximum uniform allowance rate for uniformed firefighter personnel. The effective date of this higher initial maximum uniform allowance rate is June 23, 2008.

Dated: June 17, 2008.

**Patricia Toppings,**  
*OSD Federal Register Liaison Officer,*  
*Department of Defense.*  
[FR Doc. E8-14197 Filed 6-23-08; 8:45 am]  
**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE****Office of Secretary**

**[Docket ID: DoD-2008-OS-0074]**

**Privacy Act of 1974; Systems of Records**

**AGENCY:** Defense Finance and Accounting Service, DoD.

**ACTION:** Notice to Add a New System of Records.

**SUMMARY:** The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This action will be effective without further notice on July 24, 2008 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279-8000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Krabbenhoft at (303) 676-6045.

**SUPPLEMENTARY INFORMATION:** The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 13, 2008, to the House Committee on Government on Oversight and Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-

130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated December 12, 2000, 65 FR 239.

Dated: June 18, 2008.

**Patricia Toppings,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

**T-7206**

**SYSTEM NAME:**

Non-appropriated Funds Central Payroll System (NAFCPS).

**SYSTEM LOCATION:**

Defense Information Systems Agency, Defense Enterprise Computing Center, Ogden, 7879 Wardleigh Road, Hill Air Force Base, Utah 84058-5997.

Defense Finance and Accounting Service, DFAS-Texarkana, PO BOX 611, Texarkana, Texas 75505-6111.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Department of Defense (DoD) Non-appropriated fund civilian employees in the following agencies: Department of the Army, National Security Agency (NSA), the Defense Logistics Agency (DLA) and Defense Finance and Accounting Service-Texarkana.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's name, Social Security Number (SSN) and information concerning individual records of appointment or assignment; official authenticated time and attendance records, individual leave records, information on employee's federal, state and local tax withholding and allotments.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; Department of Defense Financial Management Regulation (DoDFMR) 7000.14-R Vol. 4; 5 U.S.C. Sections 2105c, 5531, and 5533; and E.O. 9397 (SSN).

**PURPOSE(S):**

A system for maintaining and tracking pay of U.S. Army, Department of Defense and National Security Agency non-appropriated funds civilian employees. The system will calculate the net pay due each employee; provide a history of pay transaction, entitlements and deductions; maintain a record of leave accrued and taken; keep a schedule of bonds due and issued; record taxes paid; and respond to inquiries or claims.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a (b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the DoD compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic storage media.

**RETRIEVABILITY:**

Individual's name and Social Security Number (SSN).

**SAFEGUARDS:**

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for a need-to-know. Access to computerized data is restricted by passwords, which are changed according to agency security policy.

**RETENTION AND DISPOSAL:**

Records may be temporary in nature and deleted when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year, and then destroyed after 56 years. Records are destroyed by degaussing the electronic media and recycling hardcopy records. The recycled hardcopies are destroyed by shredding, burning, or pulping.

**SYSTEM MANAGER(S) AND ADDRESS:**

Defense Finance and Accounting Service (DFAS), Indianapolis, Systems Management Directorate, 8899 E 56th Street, Indianapolis, IN 46249-1056.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279-8000.

Individuals should furnish full name, Social Security Number (SSN), current

address, telephone number, and provide a reasonable description of what they are seeking.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about them contained in this system of records should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279-8000.

Individuals should furnish full name, Social Security Number (SSN), current address, telephone number and provide a reasonable description of what they are seeking.

**CONTESTING RECORD PROCEDURES:**

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11-R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279-8000.

**RECORD SOURCE CATEGORIES:**

From the individual concerned, DoD Components, National Security Agency and other Federal agencies.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E8-14206 Filed 6-23-08; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF DEFENSE**

**Department of the Army**

**Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning "Stove Apparatus"**

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR part 404.6, announcement is made of the availability for licensing of U.S. Patent No. U.S. 7,380,548 entitled "Stove Apparatus" issued June 3, 2008. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey DiTullio at U.S. Army Soldier Systems Center, Kansas Street, Natick,

MA 01760, Phone: (508) 233-4184 or E-mail: [Jeffrey.Ditullio@natick.army.mil](mailto:Jeffrey.Ditullio@natick.army.mil).

**SUPPLEMENTARY INFORMATION:** Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E8-14236 Filed 6-23-08; 8:45 am]

**BILLING CODE 3710-08-P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### Spring Bayou, Louisiana, Ecosystem Restoration Feasibility Study

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Corps of Engineers, Vicksburg District, in conjunction with the Avoyelles Parish Police Jury, the non-Federal sponsor, is undertaking studies to investigate the feasibility of restoring the Spring Bayou area ecosystem.

**DATES:** Initiate EIS, June 30, 2008.

**ADDRESSES:** Correspondence may be sent to Mr. Larry Marcy, U.S. Army Engineer District, Vicksburg, CEMVK-PP-PQ, 4155 Clay Street, Vicksburg, MS 39183-3435.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Marcy at U.S. Army Corps of Engineers, Vicksburg District, telephone (601) 631-5965, fax (601) 631-5115, or e-mail at [larry.e.marcy@usace.army.mil](mailto:larry.e.marcy@usace.army.mil).

**SUPPLEMENTARY INFORMATION:**

*Proposed Action.* A feasibility level study will identify and evaluate alternatives to restore the Spring Bayou area ecosystem, Avoyelles Parish, Louisiana. The ecosystem is being degraded by water pollution, sedimentation, and growth of nuisance aquatic weeds. An opportunity exists to restore previously existing hydrology by diverting freshwater from the Red River into the Spring Bayou area to improve water quality, fishery production, and wetland habitat.

*Alternatives.* Alternative locations for water diversion from the Red River will be identified and evaluated, as well as investigating alternatives to control sediment entering the Spring Bayou area from Chatlin Lake Canal. Combinations of alternatives involving water diversion, sediment control or removal, modification or replacement of existing water control structures, and nuisance aquatic weed control will be developed and evaluated in cooperation with state

and Federal agencies, local government, Native American tribes, and the public.

*Scoping.* Scoping is the process for determining the range of the alternatives and significant issues to be addressed in the Environmental Impact Statement (EIS). For this analysis, a letter will be sent to all parties believed to have an interest in the analysis, requesting their input on alternatives and issues to be evaluated. The letter will also notify interested parties of the public scoping meeting that will be held in the local area. A notice will be sent to the local news media. All interested parties are invited to comment at this time, and anyone interested in the study should request to be included on the mailing list.

A public scoping meeting will be held July 29, 2008, beginning at 7 p.m. at the Marksville Fire Department, 512 North Main Street, Marksville, Louisiana.

*Significant Issues.* The tentative list of resources and issues to be evaluated in the EIS includes aquatic resources, recreational fisheries, wildlife resources, water quality, air quality, threatened or endangered species, recreation resources, and cultural resources. Tentative socioeconomic items to be evaluated in the EIS include business and industrial activity, tax revenues, community and regional growth, community cohesion, and navigation.

*Environmental Consultation and Review.* The U.S. Fish and Wildlife Service (FWS) will be asked to assist in the documentation of existing conditions, impact analysis of alternatives, and overall study review through the Fish and Wildlife Coordination Act (FWCA) consultation procedures. The FWS would provide an FWCA report to be incorporated into the EIS. The draft EIS or a Notice of Availability will be distributed to all interested agencies, organizations, and individuals.

*Estimated Date of Availability.* The earliest that the draft EIS is expected to be available is May 2010.

Dated: June 10, 2008.

**Douglas J. Kamien,**

*Chief, Planning, Programs, and Project Management Division.*

[FR Doc. E8-14240 Filed 6-23-08; 8:45 am]

**BILLING CODE 3710-PU-P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### Intent To Prepare a Draft Environmental Impact Statement for the Clear Creek General Reevaluation Study, Brazoria, Fort Bend, Galveston and Harris Counties, TX

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The Clear Creek watershed drains portions of Fort Bend, Harris, Galveston, and Brazoria counties, Texas, including portions of Houston and the smaller towns of League City, Friendswood and Pearland, among others. The watershed also forms part of the boundary between Harris County to the north and Galveston and Brazoria counties to the south. Clear Creek flows into the west side of upper Galveston Bay through Clear Lake. The Draft Environmental Impact Statement (DEIS) will evaluate several flood detention and conveyance features to reduce flooding of homes and businesses in the Clear Creek Watershed. The study will focus on environmental and social conditions currently present and those likely to be affected by the proposed changes in the watershed. The flood-control project includes construction of several miles of high flow channel adjacent to the existing channel, while preserving the existing channel and floodplain forest. Detention of flood waters would also be provided in some areas where the high flow channel diverges from the low flow channel and in off-line detention areas adjacent to the creek. All flood control measures on Clear Creek occur upstream of the Dixie Farm Road crossing. The proposed project also includes widening three tributaries to Clear Creek, Mud Gully, Turkey Creek, and Mary's Creek, for improved conveyance of flood flows, with detention basins constructed adjacent to Mary's Creek and between Clear Creek and Mud Gully.

**ADDRESSES:** U.S. Army Corps of Engineers, Galveston District, P.O. Box 1229, Galveston, TX 77553-1229.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Heinly, (409) 766-3992, Planning Lead, Planning Section, Planning, Environmental and Regulatory Division; or Ms. Andrea Catanzaro, (409) 766-6346, Environmental Lead, Environmental Section, Planning, Environmental and Regulatory Division.

**SUPPLEMENTARY INFORMATION:**

(1) *Background.* Flooding along Clear Creek has caused problems for over 30

years. Floodwaters in 1973, 1976, 1979, 1989, and 1994 substantially damaged residences along the creek. Heavy rains from Tropical Storm Allison in 2001 resulted in severe flooding along Clear Creek and prompted the buyout of approximately 300 flood-prone homes. However, flooding is not only a problem associated severe rain events, but has become increasingly more frequent along Clear Creek, even with moderate amounts of rainfall. Local authorities have made limited channel improvements to address specific flood concerns, but those efforts have contributed little to resolving the current large-scale flooding problem. The Clear Creek Federal flood control project was authorized by Congress in the Flood Control Act of 1968 (Pub. L. 91-611, Section 221). The authorized project extended 31 miles from Clear Lake to the Fort Bend County line. Plans included deepening, widening, and realigning the creek channel. The congressional authorization for this project only allows the consideration of reducing flood damage caused by rainfall runoff along the main channel of Clear Creek and not coastal flooding caused by tropical storm systems. In 1982 the Phase I General Design Memorandum, including the Final Environmental Impact Statement, was signed by the U.S. Army Corps of Engineers (USACE) Southwest Division Engineer, thus authorizing the detailed design. Due to concerns regarding its design, the project's non-Federal sponsors, Galveston County and Harris County Flood Control District, with input from the public and governmental entities, requested reevaluation of the design. In 1997, the sponsors requested the USACE adopt changes to the plans. The changes requested by the non-Federal sponsors were beyond the discretionary authority of the USACE Southwest Division Commander to approve. As a result, in February 1999, the USACE decided a general reevaluation study would be needed. In April 1999, the non-Federal sponsors agreed to accept the USACE recommendation to conduct the general reevaluation study. The general reevaluation study reconsidered the previously authorized project as well as non-Federal sponsor-proposed alternatives and other alternatives that were deemed reasonable. Brazoria County Drainage District #4 joined the non-Federal sponsors in this effort by June 1999.

(2) *Alternatives.* The construction alternatives that will be evaluated are: (1) Constructing 15.2 miles of 130 ft to 240 ft wide high flow channel in two

separate sections of Clear Creek. (2) Detention of 485 acre feet of flood water in the high flow channel of Clear Creek where it diverges from the low flow channel. (3) Detention of 1,750 acre feet of flood water in a 160 acre basin adjacent to Clear Creek. (4) Construction of a grass-lined channel on 2.4 miles of Turkey Creek to its confluence with Clear Creek. (5) Construction of a concrete-lined channel for 0.8 mile of Mud Gully in the reach which is located between the northbound and southbound lanes of Beamer Rd. (6) Detention of 1,515 acre feet of flood water in a 120 acre basin between Clear Creek and Mud Gully. (7) Construction of a 2.1 mile grass-lined channel on Mary's Creek. (8) Detention of 857 acre feet of flood water in two detention basins totaling 120 acres along Mary's Creek.

(3) *Scoping.* Scoping meetings were held on March 15, 2001 at the Friendswood High School in Friendswood, TX, on March 15, 2001 in Friendswood, TX, on May 3, 2001 in League City, TX, and on May 9, 2001 in Pearland, TX. The scoping process involved Federal, State and local agencies, and other interested persons and organizations. Comments were received for 30 days following each scoping meeting. Comments will be considered during preparation of the EIS. At this time, there are no plans for an additional scoping effort.

(4) *Coordination.* Further coordination with environmental agencies will be conducted under the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the Clean Water Act, the Clean Air Act, the National Historic Preservation Act, the Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat), and the Coastal Zone Management Act under the Texas Coastal Management Program.

(5) *DEIS Preparation.* It is estimated that the DEIS will be available to the public for review and comment in March 2009.

**Richard Medina,**

*Chief, Planning and Environmental Branch.*

[FR Doc. E8-14239 Filed 6-23-08; 8:45 am]

**BILLING CODE 3710-52-P**

**DEPARTMENT OF EDUCATION**

**Notice of Proposed Information Collection Requests**

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management

Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 25, 2008.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 18, 2008.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

**Federal Student Aid**

*Type of Review:* Revision.

*Title:* Federal Family Education Loan, Direct Loan, and Perkins Loan Discharge Applications.

*Frequency:* On Occasion.

*Affected Public:* Individuals or household.

*Reporting and Recordkeeping Hour Burden:**Responses:* 29,543.*Burden Hours:* 14,774.

*Abstract:* These forms serve as the means by which eligible borrowers in the FFEL, Direct Loan, and Perkins Loan programs apply for discharge of their loans based on school closure (FFEL, Direct Loan, and Perkins Loan program loans), or false certification of student eligibility (FFEL, and Direct Loan program loans only). The holders of FFEL, Direct Loan, and Perkins Loan program loans use the information collected on these forms to determine whether a borrower meets the eligibility requirements for a closed school or false certification loan discharge.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3743. When you access the information collection, click on "Download Attachments" to view.

Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E8-14173 Filed 6-23-08; 8:45 am]

BILLING CODE 4000-01-P

**DEPARTMENT OF EDUCATION**

**Office of Special Education and Rehabilitative Services; Overview Information; Personnel Development To Improve Services and Results for Children With Disabilities—National Center To Improve the Recruitment and Retention of Qualified Personnel for Children With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008**

Catalog of Federal Domestic Assistance (CFDA) Number: 84.325C.

*DATES:**Applications Available:* June 24, 2008.*Deadline for Transmittal of**Applications:* July 24, 2008.*Deadline for Intergovernmental Review:* September 22, 2008.**Full Text of Announcement****I. Funding Opportunity Description**

*Purpose of Program:* The purposes of this program are to (1) help address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with infants, toddlers, and children with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically based research and experience, to be successful in serving those children.

*Priority:* In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 662 and 681(d) of the Individuals with Disabilities Education Act (IDEA)). 20 U.S.C. 1462 and 1481(d).

*Absolute Priority:* For FY 2008 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

*National Center to Improve the Recruitment and Retention of Qualified Personnel for Children With Disabilities (84.325C).*

**Background**

Under Part B of IDEA, section 612(a)(14) requires States to ensure that special education teachers and related services personnel providing services are appropriately and adequately prepared and trained. In implementing this requirement, States must ensure that local educational agencies (LEAs) take measurable steps to recruit, hire, train, and retain highly qualified special education teachers and related services personnel to serve children with disabilities. Likewise, under Part C of IDEA, section 635(a)(8) and (9) requires States to maintain comprehensive systems of personnel development that include strategies to prepare, recruit, and retain early intervention service providers who are fully and appropriately qualified to provide early intervention services.

States and LEAs report challenges in recruiting and retaining highly qualified special education teachers, which could affect their ability to meet the Federal personnel requirements under IDEA. Throughout the United States, there is a chronic and pervasive shortage of special education teachers and this shortage is expected to increase over

time (McLeskey, Tyler, & Flippin, 2004). In addition, there is a severe shortage of special educators from culturally and linguistically diverse backgrounds that reflects the lack of diversity in the teacher population as a whole (McLeskey *et al.*, 2004; NCES, 2003).

Nationwide, there is a growing shortage of qualified school-based related services personnel, including audiologists, occupational therapists, physical therapists, and speech-language pathologists (Center on Personnel Studies in Special Education, 2004). Part C early intervention and Part B preschool programs also report significant personnel shortages across disciplines serving infants, toddlers, and preschoolers with disabilities and their families (Center to Inform Personnel Preparation Policy and Practice in Early Intervention and Preschool Education, 2007).

The current personnel shortage has multiple causes, including increases in (a) the number of positions created to meet the growing population of infants, toddlers, and children with disabilities, and (b) the number of special education personnel moving out of direct service roles to other positions in the field, switching to regular education, or leaving the profession altogether (McLeskey *et al.*, 2004). Uncertified or inadequately prepared personnel, as well as younger and inexperienced personnel, are more likely to leave their positions than their certified and more experienced colleagues (Billingsley, 2004; McLeskey *et al.*, 2004).

To address these on-going challenges effectively, States must adopt evidence-based and comprehensive strategies to recruit new special education teachers, related services personnel, and early intervention personnel, retain the current workforce, and improve the skills of uncertified and inadequately prepared personnel. In 2003, the Office of Special Education Programs (OSEP) funded the National Center for Special Education Personnel and Related Services Providers (Personnel Center) to help States develop and implement strategies to recruit and retain sufficient numbers of highly or fully qualified personnel. (Information on the work of the Personnel Center is available at <http://www.personnelcenter.org>) To further enhance the capacity of States and LEAs to recruit and retain sufficient numbers of highly or fully qualified personnel, the Secretary is proposing to establish a National Center to Improve the Recruitment and Retention of Qualified Personnel for Children With Disabilities.

**Priority**

The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a National Center to Improve the Recruitment and Retention of Qualified Personnel for Children With Disabilities (Center). This Center will identify, disseminate, and assist States in implementing evidence-based recruitment and retention practices in order to help meet States' needs for highly or fully qualified special education, early intervention, and related services personnel, including paraprofessionals (qualified personnel).

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. The project funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

**Application Requirements.** An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project;

**Note:** For more information on logic models, the following Web site lists multiple online resources: <http://www.cdc.gov/eval/resources.htm>.

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A budget for attendance at the following:

(1) A one and one half day kick-off meeting to be held in Washington, DC within four weeks after receipt of the award, and an annual one-day planning meeting held in Washington, DC with the OSEP Project Officer during each subsequent year of the project period.

(2) A three-day Project Directors' Conference in Washington, DC during each year of the project period.

(3) A four-day Technical Assistance and Dissemination meeting in

Washington, DC during each year of the project period; and

(e) A line item in the proposed budget for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's activities, as those needs are identified in consultation with OSEP.

**Note:** With approval from the OSEP Project Officer, the Center must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period.

**Project Activities.** To meet the requirements of this priority, the Center, at a minimum, must conduct the following activities:

**Knowledge Development Activities**

(a) During the first year of the project period, examine existing literature reviews and conduct literature reviews to identify evidence-based practices (e.g., mentoring programs) that have been shown to be effective in recruiting and retaining qualified personnel to serve infants, toddlers, and children with disabilities. To the extent possible, the Center must use the standards established by the What Works Clearinghouse, (<http://ies.ed.gov/ncee/wwc/overview/review.asp?ag=pi>) in identifying evidence-based practices. The Center must also identify (in existing literature reviews and reviews conducted by the Center) current findings on innovative recruitment and retention strategies (e.g., peer collaboration programs) that show promise in the field, but for which the research base is less well developed.

(b) Review available State information related to shortages in personnel to meet the needs of children served through Part B and Part C programs from sources such as IDEA State Performance Plans (SPPs), IDEA Annual Performance Reports (APRs), and any other relevant sources to gain an understanding of States' personnel needs.

**Technical Assistance and Dissemination Activities**

(a) Assist a minimum of four different States during each year of the project period in building their capacity to recruit and retain early intervention service personnel for lead agencies and special education and related services personnel for State educational agencies (SEAs) and LEAs. Factors for consideration in selecting these States could include the demographic and geographic characteristics of each State, each State's recruitment and retention needs, and the previous initiatives focused on recruitment and retention that have taken place in the State. The

Center must obtain approval from the OSEP Project Officer on the final selection of States.

**Note:** To fulfill the requirements of paragraph (b) of the *Application Requirements* of this priority, applicants must describe the methods and criteria for recruiting and selecting States for this activity in their application.

To assist these States, the Center must—

(1) Provide technical assistance (TA) to the SEAs and Part C State lead agencies to increase their capacity, as appropriate, to—

(i) Create or improve data systems that can be used to identify State personnel needs and disaggregate highly qualified special education teacher (HQT) (as defined in § 300.18) data by student disability category (as defined in § 300.8), and use those data to inform decision-making on recruitment and retention efforts.

(ii) Develop and implement a plan to recruit individuals from communities within the State, particularly individuals from diverse cultural and linguistic backgrounds, to pursue careers in early intervention, special education, and related services and evaluate the effectiveness of strategies used; and

(iii) Develop and implement a plan to support and increase the likelihood of retaining personnel in early intervention, special education, and related services positions within the State and evaluate the effectiveness of strategies used.

(2) Develop and coordinate a national TA network comprised of a cadre of experts that the Center will use to provide TA to States to assist them in addressing recruitment and retention issues; and

(3) Synthesize and analyze State personnel data and disseminate this information to SEAs, LEAs, and lead agencies so that they can use these data to predict hiring needs and work with organizations, such as institutions of higher education (IHEs), including community colleges, to recruit and train personnel in high need areas.

(b) Conduct nationwide outreach activities to encourage individuals, including individuals with disabilities, individuals from diverse cultural and linguistic backgrounds, and individuals who have changed or may change careers, to pursue careers in early intervention, special education, and related services. These outreach activities must also encourage individuals to pursue careers as paraprofessionals. In developing, implementing, and maintaining a

comprehensive and coordinated recruitment campaign, the Center must incorporate findings on effective recruitment strategies from its literature reviews and from the research conducted by the OSEP-funded Center on Personnel Studies in Special Education (<http://www.coe.ufl.edu/copsse/>) into its activities. The Center also must utilize a wide range of communication strategies and media outlets in its outreach activities.

(c) Provide information to individuals who have expressed interest in pursuing a career in early intervention, special education, or related services. To address this requirement, the Center must—

(1) Compile and regularly update information on ongoing and emerging areas of personnel need, as identified by SEAs, LEAs, lead agencies, and other relevant entities;

(2) Develop and maintain a comprehensive, up-to-date, searchable, and easily accessible database of accredited early intervention, special education, and related services personnel preparation programs available across the country. This database must reflect the full range of training opportunities, including both traditional and alternative programs; and

(3) Develop and maintain a comprehensive, up-to-date, searchable, and easily accessible database of information on available student financial assistance, including financial assistance provided by the Department, other Federal agencies, State agencies, and public and private sources to support training opportunities for individuals pursuing careers in early intervention, special education and related services.

(d) Maintain a Web site that meets a government or industry-recognized standard for accessibility and that links to the Web site operated by the Technical Assistance Coordination Center (TACC), which OSEP intends to fund in FY 2008. The Web site must contain information on early intervention, special education, and related services careers, including careers for paraprofessionals; current research on recruiting, developing, and retaining a diverse, qualified workforce; and other relevant resources on recruitment and retention.

(e) Prepare and disseminate reports, documents, and other materials on trends, emerging research, and compelling issues relating to the recruitment and retention of early intervention, special education, and related services personnel, and related topics, as requested by OSEP for specific

audiences, including SEAs, LEAs, lead agencies, and IHEs, including community colleges. In consultation with the OSEP Project Officer and the advisory committee established in accordance with paragraph (b) in the *Leadership and Coordination Activities* section of this priority, make selected reports, documents, and other materials available for SEAs, LEAs, lead agencies, and IHEs, including community colleges in both English and Spanish.

#### Leadership and Coordination Activities

(a) Provide information to OSEP at least twice during the project period on the capacity of States to use their personnel data systems to disaggregate HQT data by student disability category.

(b) Establish and maintain an advisory committee to review the activities and outcomes of the Center and provide programmatic support and advice throughout the project period. At a minimum, the advisory committee must meet on an annual basis in Washington, DC, and consist of SEA, LEA, lead agency, IHE, and community college representatives, and a parent of an infant, toddler, or child with a disability. The Center must submit the names of proposed members of the advisory committee to OSEP for approval within eight weeks after receipt of the award.

(c) Communicate and collaborate, on an ongoing basis, with OSEP-funded projects, including the National Comprehensive Center on Teacher Quality, the Center for Improving Teacher Quality, the National Center to Inform Policy and Practice in Special Education Professional Development, the National Outreach and Technical Assistance Center on Discretionary Awards for Minority Institutions, CONNECT: The Center to Mobilize Early Childhood Knowledge, the National Professional Development Center on Autism Spectrum Disorders, the Parent Information Centers, the Regional Resource Centers, and the Center on the Statewide Improvement of Teacher Preparation Programs, which OSEP intends to fund in FY 2008. This collaboration could include the joint development of products, the coordination of TA services, and planning and implementing TA meetings and events.

(d) Participate in, organize, or facilitate, as appropriate, OSEP communities of practice (<http://www.tacommunities.org/>) that are aligned with the Center's objectives as a way to support discussions and collaboration among key stakeholders.

(e) Prior to developing any new product, whether paper or electronic,

submit to the OSEP Project Officer and the Proposed Product Advisory Board at OSEP's TACC for approval, a proposal describing the content and purpose of the product.

(f) Coordinate with the National Dissemination Center for Individuals with Disabilities, which OSEP intends to fund in FY 2008, to develop an efficient and high-quality dissemination strategy that reaches broad audiences. The Center must report to the OSEP Project Officer the outcomes of these coordination efforts.

(g) Contribute, on an ongoing basis, updated information on the Center's services to OSEP's Technical Assistance and Dissemination Matrix (<http://matrix.rfcnetwork.org/>), which provides current information on Department-funded TA services to a range of stakeholders.

(h) Conduct a summative evaluation of the Center in collaboration with the OSEP-funded Center to Improve Project Performance (CIPP) as described in the following paragraphs. This summative evaluation must examine the outcomes or impact of the Center's activities in order to assess the effectiveness of those activities in improving the recruitment and retention of qualified personnel for children with disabilities.

**Note:** The major tasks of CIPP would be to guide, coordinate, and oversee the summative evaluations conducted by selected Technical Assistance, Personnel Development, Parent Training and Information Center, and Technology projects that individually receive \$500,000 or more funding from OSEP annually. The efforts of CIPP are expected to enhance individual project evaluations by providing expert and unbiased assistance in designing evaluations, conducting analyses, and interpreting data.

To fulfill the requirements of the summative evaluation to be conducted under the guidance of CIPP, the Center must—

(1) Hire or designate, with the approval of the OSEP Project Officer, a project liaison staff person with sufficient dedicated time, evaluation experience and knowledge of the Center to work with CIPP on the following tasks: (i) Planning for the Center's summative evaluation (e.g., selecting evaluation questions, developing a timeline for the evaluation, locating sources of relevant data, and refining the logic model used for the evaluation), (ii) developing the summative evaluation design and instrumentation (e.g., determining quantitative or qualitative data collection strategies, selecting respondent samples, and pilot testing instruments), (iii) coordinating the evaluation timeline with the implementation of the Center's



activities, (iv) collecting summative data, and SE (v) writing reports of summative evaluation findings;

(2) Cooperate with CIPP staff in order to accomplish the tasks described in paragraph (1) of this section; and

(3) Dedicate \$30,000 of the annual budget request for this project to cover the costs of carrying out the tasks described in paragraphs (1) and (2) of this section, implementing the Center's formative evaluation, and traveling to Washington, DC in the second year of the project period for the Center's review for continued funding.

(i) Maintain ongoing communication with the OSEP Project Officer through monthly phone conversations and e-mail communication.

#### *Fourth and Fifth Years of the Project*

In deciding whether to continue funding the Center for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting in Washington, DC that will be held during the last half of the second year of the project period;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) The quality, relevance, and usefulness of the Center's activities and products and the degree to which the Center's activities and products have contributed to changed practice and improved recruitment and retention of personnel for children with disabilities.

#### *References*

Billingsley, B. (2004). Special education teacher retention and attrition: A critical analysis of the research literature. *The Journal of Special Education*, 38(1), 39–55.

Center to Inform Personnel Preparation Policy and Practice in Early Intervention and Preschool Education. (2007, October). *At a Glance* \* \* \* (Volume 1, Nos. 1 & 2). Retrieved January 21, 2008 from [http://www.uconnuidd.org/per\\_prep\\_center/PDFs/at%20a%20glance%20finals/At%20a%20Glance%20Vol.%207,%20No.%1201%2010.25.07.pdf](http://www.uconnuidd.org/per_prep_center/PDFs/at%20a%20glance%20finals/At%20a%20Glance%20Vol.%207,%20No.%1201%2010.25.07.pdf).

Center on Personnel Studies in Special Education. (2004, February.) An insufficient supply and a growing demand for qualified related service personnel. *Special Education Workforce Watch: Insights from Research*. Retrieved January 21, 2008

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McLeskey, J., Tyler, N., & Flippin, S.S. (2004). The supply and demand for special education teachers: A review of research regarding the chronic shortage of special education teachers. *The Journal of Special Education*, 38(1), 5–21.

National Center for Education Statistics. (2003). *Assessment of Diversity in America's Teaching Force: A Call to Action*. Retrieved January 21, 2008 from <http://www.nea.org/teacherquality/images/diversityreport.pdf>.

#### *Waiver of Proposed Rulemaking:*

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

**Program Authority:** 20 U.S.C. 1462 and 1481.

**Applicable Regulations:** (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

(b) The regulations for this program in 34 CFR part 304.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to IHEs only.

## **II. Award Information**

**Type of Award:** Cooperative agreement.

**Estimated Available Funds:** \$500,000.

**Estimated Average Size of Awards:** \$500,000.

**Maximum Award:** We will reject any application that proposes a budget exceeding \$500,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

**Number of Awards:** 1.

**Note:** The Department is not bound by any estimates in this notice.

**Project Period:** Up to 60 months.

## **III. Eligibility Information**

1. **Eligible Applicants:** SEAs; LEAs; public charter schools that are LEAs under State law; IHEs; other public agencies (including lead agencies under Part C of IDEA); private nonprofit

organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

2. **Cost Sharing or Matching:** This competition does not require cost sharing or matching.

3. **Other: General Requirements—**(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

## **IV. Application and Submission Information**

1. **Address to Request Application Package:** Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: <http://www.ed.gov/pubs/edpubs.html> or at its e-mail address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov).

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.325C.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. **Content and Form of Application Submission:** Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

**Page Limit:** The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the two-page abstract, the resumes, the bibliography, the references, or the letters of support. The page limit, however, does apply to the application narrative (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

### 3. *Submission Dates and Times:*

*Applications Available:* June 24, 2008.

*Deadline for Transmittal of Applications:* July 24, 2008.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

*Deadline for Intergovernmental Review:* June 24, 2008.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The National Center to Improve the Recruitment and Retention of Qualified Personnel for Children With Disabilities competition, CFDA Number 84.325C, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at <http://www.Grants.gov>. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the National Center to Improve the Recruitment and Retention of Qualified Personnel for Children With Disabilities competition at <http://www.Grants.gov>. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.325, not 84.325C).

*Please note the following:*

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application

deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You also can find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf>.

- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see [http://www.grants.gov/applicants/get\\_registered.jsp](http://www.grants.gov/applicants/get_registered.jsp)) These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see <http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf>).

You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document)

format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

**Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:** If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

#### b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

*By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center *Attention:* (CFDA Number 84.325C), 400 Maryland Avenue, SW., Washington, DC 20202-4260; or

*By mail through a commercial carrier:* U.S. Department of Education, Application Control Center, Stop 4260, *Attention:* (CFDA Number 84.325C), 7100 Old Landover Road, Landover, MD 20785-1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.

- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

- (3) A dated shipping label, invoice, or receipt from a commercial carrier.

- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.

- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

#### c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education,

Application Control Center, *Attention:* (CFDA Number 84.325C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

*Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department—

- (1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

- (2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

## V. Application Review Information

- 1. Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

- 2. Peer Review:* In the past, the Department has had difficulty finding peer reviewers for certain competitions, because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary also may require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the technical assistance and dissemination activities currently being supported under Part D of IDEA. These measures, which will be used for the competition announced in this notice, focus on: The percentage of products and services deemed to be of high quality by an independent review panel of qualified experts or individuals with appropriate expertise to review the substantive content of the products and services; the percentage of products and services deemed to be of high relevance to educational and early intervention policy or practice by an independent review panel of qualified members of the target audiences of the technical assistance and disseminations; and the percentage of all products and services deemed to be of high usefulness by

target audiences to improve educational or early intervention policy or practice.

Grantees may be asked to participate in assessing and providing information on these aspects of program quality.

## VII. Agency Contact

*For Further Information Contact:* Maryann McDermott, U.S. Department of Education, 400 Maryland Avenue, SW., room 4153, Potomac Center Plaza (PCP), Washington, DC 20202-2550. *Telephone:* (202) 245-7439.

If you use a TDD, call the Federal Relay Service (FRS), toll-free, at 1-800-877-8339.

## VIII. Other Information

*Alternative Format:* Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202-2550. *Telephone:* (202) 245-7363. If you use a TDD, call the FRS, toll free, at 1-800-877-8339.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: June 18, 2008.

**Tracy R. Justesen,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. E8-14273 Filed 6-23-08; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### National Advisory Council on Indian Education (NACIE)

**AGENCY:** U.S. Department of Education.

**ACTION:** Notice of an Open Meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of an upcoming meeting of the National Advisory Council on Indian Education (the Council) and is intended to notify the general public of the meeting. This notice also describes the functions of the Council. Notice of the Council's meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act and by the Council's charter.

*Agenda:* The purpose of the meeting will be for the Council to receive a briefing on three reports: Parts I and II of the National Indian Education Study and The Status and Trends of Indian Education Report, and to receive informational updates on State initiatives by selected State Indian Education Directors.

*Date and Time:* July 7, 2008; 1:00 p.m. to 5:30 p.m. Mountain Daylight Savings Time. This notice is appearing in the **Federal Register** less than 15 days before the date of the meeting due to scheduling difficulties within the agency and with the Council.

*Location:* Holiday Inn, Rapid City, South Dakota.

*Public Comment:* Time is scheduled on the agenda to receive public comment at approximately 4:45 p.m. Mountain Daylight Savings Time. Oral comments will be limited to not more than 10 minutes per individual or group. Written comments will also be accepted at the meeting or may be submitted until the time of the meeting via e-mail to: [Cathie.Carothers@ed.gov](mailto:Cathie.Carothers@ed.gov).

**FOR FURTHER INFORMATION CONTACT:** Cathie Carothers, Director, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. *Telephone:* 202-260-1683. *Fax:* 202-260-7779.

**SUPPLEMENTARY INFORMATION:** The National Advisory Council on Indian Education is authorized by Section 7141 of the Elementary and Secondary Education Act. The Committee is established within the Department of Education to advise the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the Elementary and Secondary Education Act. The Council submits to the Congress, not later than June 30 of each year, a report on the activities of the Council that includes

recommendations the Council considers appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

The purpose of this meeting is to provide the Council with a briefing on three new reports recently completed by the Department: The National Indian Education Study, Parts I and II, and The Status and Trends of Indian Education which will be released at the National Conference on Indian Education that starts on July 8, 2008 in Rapid City, South Dakota. The Council will also receive informational updates on State initiatives by selected State Indian Education Directors and general updates from the Department of Education. The meeting is being held as a pre-conference activity of the National Conference on Indian Education which is an activity of Executive Order 13336 on American Indian and Alaska Native Education.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistance listening devices, or materials in alternative format) should notify Cathie Carothers at (202) 260-7485 no later than July 1, 2008. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Council proceedings and are available for public inspection at the Office of Indian Education, United States Department of Education, Room 5C140, 400 Maryland Avenue, SW., Washington, DC 20202.

**Electronic Access to This Document:** You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister/index.html>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO

Access at: <http://www.gpoaccess.gov/nara/index.html>.

**Kerri L. Briggs,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. E8-14269 Filed 6-23-08; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### Bright Tomorrow Lighting Competition (L Prize™)

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of open entry period for performance competition.

**SUMMARY:** Pursuant to the Energy Independence and Security Act (EISA) of 2007; Subtitle E; Section 655, the National Energy Technology Laboratory, on behalf of the Office of Energy Efficiency and Renewable Energy's Building Technologies Program, intends to accept entrants to the Bright Tomorrow Lighting Competition (L Prize™). As outlined in the EISA, the DOE is accepting entries of Solid-State Lighting (SSL) products for full performance evaluation which have the technical potential to qualify for one of two entrant categories: 60-watt incandescent replacement and PAR type 38 halogen replacement lamps. The DOE anticipates release of the twenty-first century lamp category at a future date.

**DATES:** The entry period for the 60-watt incandescent and PAR 38 halogen replacement lamps is now open and will remain open until a qualified winner is announced.

**ADDRESSES:** National Energy Technology Laboratory, 3610 Collins Ferry Road, Morgantown, WV 26505.

**FOR FURTHER INFORMATION CONTACT:** C. Eddie Christy, National Energy Technology Laboratory, 3610 Collins Ferry Road, MS E-06, Morgantown, WV 26505, (304) 285-4604, E-mail: [cchris@netl.doe.gov](mailto:cchris@netl.doe.gov).

Detailed information regarding this competition is available at <http://www.lightingprize.org>.

**SUPPLEMENTARY INFORMATION:** The L Prize Competition is intended to encourage development and deployment of highly energy efficient solid-state lighting (SSL) products to replace several of the most common lighting products currently used in the United States, including 60-watt A19 incandescent and PAR 38 halogen lamps. To significantly impact the

national market and lighting use, the SSL products must perform similarly to the lamps they are intended to replace in terms of color appearance, light output, light distribution, and lamp shape, size, form factor, appearance and operating environment. They must be reliable, available through normal market channels, and competitively priced.

Entries to each category will be evaluated against the respective performance criteria which are based upon the statutory requirements of the EISA. Full performance specification criteria and competition details can be found at <http://www.lightingprize.org>.

Subject to the availability of funding through appropriations, EISA provides for cash prizes for each prize category. Actual cash prizes are subject to the availability of appropriated funding from future appropriations and private funding contributions as authorized by the EISA. Funding for the cash prizes is not available during fiscal year 2008; however, due to the required duration of the evaluation process, the DOE does not anticipate declaring successful entrants prior to fiscal year 2009.

In addition to cash prizes, the L Prize authorization provides that the Secretary of Energy is to consult with the Administrator of General Services to develop federal purchase guidelines with the goal of conducting a Federal procurement of SSL products from the winner under the 60-watt incandescent and PAR 38 halogen categories.

Entrants must submit 2,000 commercially acceptable quality control units which meet the full criteria specified at <http://www.lightingprize.org>.

Issued in Morgantown, WV on June 10, 2008.

**C. Edward Christy,**

*Division Director, Buildings & Industrial Technologies Division.*

[FR Doc. E8-14202 Filed 6-23-08; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Wednesday, June 18, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP97-81-048.

*Applicants:* Kinder Morgan Interstate Gas Trans. LLC.

*Description:* Kinder Morgan Interstate Gas Transmission LLC submits Twenty-

Second Revised Sheet 4G.01 to FERC Gas Tariff, Fourth Revised Volume 1–A, to be effective 6/16/08.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080616–0091.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 30, 2008.

*Docket Numbers:* RP00–426–035.

*Applicants:* Texas Gas Transmission, LLC.

*Description:* Texas Gas Transmission, LLC submits Second Revised Sheet 54A *et al.* to FERC Gas Tariff, Second Revised Volume 1, to be effective 6/1/08.

*Filed Date:* 06/02/2008.

*Accession Number:* 20080603–0134.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 20, 2008.

*Docket Numbers:* RP04–98–004.

*Applicants:* Indicated Shippers v. Columbia Gulf Tran.

*Description:* Columbia Gulf Transmission Company submits Second Revised Sheet 235 *et al.* to FERC Gas Tariff, Second Revised Volume 1, to be effective 7/16/08.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080617–0005.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 30, 2008.

*Docket Numbers:* RP08–409–000.

*Applicants:* MarkWest New Mexico, L.L.C.

*Description:* MarkWest New Mexico, LLC submits its FERC Gas Tariff, Second Revised Volume 1 effective 8/1/08.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080616–0084.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 30, 2008.

*Docket Numbers:* RP08–410–000.

*Applicants:* Iroquois Gas Transmission System, L.P.

*Description:* Iroquois Gas Transmission System, LP submits Fifth Revised Sheet 8 to FERC Gas Tariff, First Revised Volume 1, to be effective 7/16/08.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080616–0092.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 30, 2008.

*Docket Numbers:* RP08–411–000.

*Applicants:* Northwest Pipeline GP.  
*Description:* Northwest Pipeline GP submits First Revised Sheet 204 *et al.* to FERC Gas Tariff, Fourth Revised Volume No. 1, to be effective July 16, 2008.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080617–0075.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 30, 2008.

*Docket Numbers:* RP08–412–000.

*Applicants:* Guardian Pipeline, L.L.C.

*Description:* Guardian Pipeline, LLC submits Ninth Revised Sheet 6 *et al.* of its FERC Gas Tariff, Original Volume 1, to be effective 7/1/08.

*Filed Date:* 06/17/2008.

*Accession Number:* 20080617–0254.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 30, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8–14175 Filed 6–23–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings # 1

June 18, 2008.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER96–2495–030; ER97–4143–018; ER07–1130–001; ER98–2075–024; ER98–542–020.

*Applicants:* AEP Power Marketing Inc; American Electric Power Service Corporation; CSW Energy Services, Inc.; Central and South West Services, Inc.

*Description:* Response of American Electric Power Service Corporation.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080616–5108.  
*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* ER96–2601–021; ER96–2602–010.

*Applicants:* DPL Energy, LLC; The Dayton Power and Light Company.

*Description:* The Dayton Power and Light Co *et al.* submits a corrected compliance filing re revised tariff filed 4/23/08.

*Filed Date:* 06/17/2008.

*Accession Number:* 20080618–0015.  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 08, 2008.

*Docket Numbers:* ER96–496–017; ER99–14–014; ER99–3658–004.

*Applicants:* Northeast Utilities Service Company; Select Energy, Inc.

*Description:* Northeast Utilities Service Co on behalf of Northeast Utilities Companies *et al.* submits a revised affirmative statement and revised proposed market-base rate tariffs etc in compliance with Order 614 and 697.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080617–0107.  
*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* ER07–59–004.

*Applicants:* Fortis Energy Marketing & Trading GP.

*Description:* Fortis Energy Marketing & Trading GP submits a request for Category 1 status and revised market-based rate tariff.

*Filed Date:* 06/17/2008.

*Accession Number:* 20080617–0259.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 08, 2008.

*Docket Numbers:* ER08-774-001.

*Applicants:* Entergy Services, Inc.

*Description:* Entergy Operating Companies submits their responses to FERC's letter request dated 5/30/08.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080617-0076.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* ER08-794-001.

*Applicants:* Ameren Services Company.

*Description:* Central Illinois Public Service Company submits a Letter Agreement in compliance with FERC's 5/27/07 Order, to be effective 6/3/08.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080617-0001.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* ER08-795-001.

*Applicants:* Ameren Services Company.

*Description:* Central Illinois Public Service Company submits a Letter Agreement in compliance with FERC's 5/27/07 letter order.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080617-0002.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* ER08-1108-000; ER00-2603-005; ER06-169-001.

*Applicants:* Syracuse Energy Corporation; Trigen-Syracuse Energy Corporation; SUEZ Energy Marketing NA, Inc.

*Description:* Syracuse Energy Corp submits notification of a change in status with respect to their market-based rate authority.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080617-0103.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* ER08-1109-000.

*Applicants:* Maine Public Service Company.

*Description:* Maine Public Service Co submits an informational filing setting forth the changes open access transmission tariff charges effective 6/1/08.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080617-0102.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* ER08-1110-000.

*Applicants:* Tampa Electric Company.  
*Description:* Tampa Electric Company submits amended charges for operation and maintenance services performed under two interconnection agreements with Mosaic Fertilizer LLC.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080617-0108.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* ER08-1111-000.

*Applicants:* Pioneer Prairie Wind Farm I, LLC.

*Description:* Petition of Pioneer Prairie Wind Farm I, LLC for order accepting market-based rate tariff for filing and granting waivers and blanket approvals.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080617-0101.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* ER08-1112-000.

*Applicants:* New York State Electric and Gas Corporation.

*Description:* New York State Electric & Gas Corporation submits a supplement to Rate Schedule FERC 200—Facilities Agreement with New York Power Authority.

*Filed Date:* 06/13/2008.

*Accession Number:* 20080617-0255.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA07-51-002.

*Applicants:* Mid-Continent Area Power Pool.

*Description:* Mid-Continent Area Power Pool submits revisions to their FERC Electric Tariff, First Revised Volume 1, effective date of 11/30/07.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080617-0257.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* OA07-61-002.

*Applicants:* Maine Public Service Company.

*Description:* Compliance filing of Maine Public Service Co.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080616-5073.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* OA08-12-002.

*Applicants:* California Independent System Operator C.

*Description:* California Independent System Operator Corp submits a filing to comply with FERC's 5/16/08 Order.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080617-0105.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* OA08-14-004.

*Applicants:* Midwest Independent Transmission System.

*Description:* Midwest Independent Transmission System Operator, Inc submits a compliance filing revising their Open Access Transmission and Energy Markets Tariff.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080617-0104.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* OA08-5-002.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool Inc submits revisions to their Open Access Transmission Tariff.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080617-0256.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* OA08-9-001.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. submits its Order No. 890 OATT Filing.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080616-5120.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

Take notice that the Commission received the following public utility holding company filings:

*Docket Numbers:* PH08-29-000.

*Applicants:* NEC-EPH Holding, LLC.

*Description:* Application (FERC-56A) of Exemption of NEC-EPH Holding, LLC.

*Filed Date:* 06/16/2008.

*Accession Number:* 20080616-5099.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an

eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. E8-14176 Filed 6-23-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings # 1

June 16, 2008.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC08-102-000.

*Applicants:* Dynegy Holdings Inc.; Rolling Hills Generating, LLC; TPF II Rolling Hills, LLC.

*Description:* Application of Dynegy Holdings, Inc *et al.* for approval to indirectly transfer to buyers of all ownership interest in Rolling Hills.

*Filed Date:* 06/11/2008.

*Accession Number:* 20080613-0022.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 02, 2008.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER01-48-010.

*Applicants:* Powerex Corp.

*Description:* Powerex Corp submits Substitute Original Sheet 3 to Third Revised Rate Schedule 1.

*Filed Date:* 06/12/2008.

*Accession Number:* 20080613-0056.

*Comment Date:* 5 p.m. Eastern Time on Thursday, July 03, 2008.

*Docket Numbers:* ER01-1527-011; ER01-1529-011.

*Applicants:* Sierra Pacific Power Company; Nevada Power Company.

*Description:* Nevada Power Co *et al.* submits notification of non-material changes in status.

*Filed Date:* 06/10/2008.

*Accession Number:* 20080612-0012.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 01, 2008.

*Docket Numbers:* ER04-268-008; ER06-398-005; ER06-399-005; ER07-157-003; ER98-4159-011.

*Applicants:* Duquesne Power, LLC; Duquesne Keystone, LLC; Duquesne Conemaugh, LLC; Macquarie Cook Power Inc.; Duquesne Light Company.

*Description:* Supplement to Updated Triennial Market Power Analysis for Duquesne Light Company, *et al.*

*Filed Date:* 06/11/2008.

*Accession Number:* 20080611-5114.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 02, 2008.

*Docket Numbers:* ER06-739-012; ER06-738-012; ER03-983-010; ER07-501-008; ER02-537-014; ER07-758-006; ER08-649-003.

*Applicants:* East Coast Power Linden Holding, LLC; Cogen Technologies Linden Venture, L.P.; Fox Energy Company LLC; Birchwood Power Partners, L.P.; Shady Hills Power Company, L.L.C.; Inland Empire Energy Center, L.L.C.

*Description:* Notice of Non-Material Change in Status of the GE Companies per Order Nos. 652, and 697.

*Filed Date:* 06/11/2008.

*Accession Number:* 20080611-5113.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 02, 2008.

*Docket Numbers:* ER06-864-010;

ER07-1356-002; ER07-1112-001; ER07-1113-001; ER07-1115-001; ER07-1116-001; ER07-1117-001; ER07-1358-002; ER07-1118-001; ER07-1119-001; ER07-1120-001; ER07-1122-001; ER06-1543-007; ER00-2885-017; ER01-2765-016; ER08-148-001; ER05-1232-009; ER02-1582-014; ER02-1785-015; ER02-2102-016; ER03-1283-011.

*Applicants:* Bear Energy LP; BE Alabama LLC; BE Allegheny LLC; BE CA LLC; BE Colquitt LLC; BE Ironwood LLC; BE KJ LLC; BE Rayle LLC; BE Red Oak LLC; BE Satilla LLC; BE Walton LLC; BE Louisiana LLC; BRUSH COGENERATION PARTNERS; Cedar Brakes I LLC; Cedar Brakes II, LLC; JPMorgan Ventures Energy Corporation; Mohawk River Funding IV, L.L.C.; Thermo Cogeneration Partnership L.P.; Utility Contract Funding, L.L.C.; Vineland Energy, LLC; CENTRAL POWER & LIME INC.

*Description:* Notice on Non-Material Change in Status re Bear Energy LP *et al.*

*Filed Date:* 06/13/2008.

*Accession Number:* 20080613-5005.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* ER06-1409-001; ER06-1408-001; ER05-1511-003; ER06-1407-001; ER06-1413-001; ER08-577-002; ER08-578-002; ER08-579-002.

*Applicants:* Noble Altona Windpark, LLC; Noble Ellenberg Windpark, LLC; Noble Thumb Windpark I, LLC; Noble Bliss Windpark, LLC; Noble Clinton Windpark I, LLC; Noble Belmont Windpark, LLC; Noble Chateaugay Windpark, LLC; Noble Wethersfield Windpark, LLC.

*Description:* Noble Environmental LLC notifies FERC of changes in certain characteristics upon which the Commission may have relied in granting market-based rate authority to the Noble Project Companies.

*Filed Date:* 06/12/2008.

*Accession Number:* 20080613-0045.

*Comment Date:* 5 p.m. Eastern Time on Thursday, July 03, 2008.

*Docket Numbers:* ER07-1332-004.

*Applicants:* Smoky Hills Wind Farm, LLC.

*Description:* Notice of Change in Status re Smoky Hills Wind Farm, LLC.

*Filed Date:* 06/13/2008.

*Accession Number:* 20080613-5010.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* ER07-357-002.

*Applicants:* Fenton Power Partners I, LLC.

*Description:* Supplemental to Notice of Change in Status of Fenton Power Partners I, LLC.

*Filed Date:* 06/13/2008.

*Accession Number:* 20080613-5063.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 23, 2008.

*Docket Numbers:* ER08-777-001.

*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc *et al.* submits Substitute 3rd revised Sheet 172 *et al.* to FERC Electric Tariff, Second Revised Volume 5 under ER08-777.

*Filed Date:* 06/13/2008.

*Accession Number:* 20080616-0085.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* ER08-796-001.

*Applicants:* ITC Midwest LLC.

*Description:* ITC Midwest LLC submits responses to FERC's letter dated 5/29/08.

*Filed Date:* 06/11/2008.

*Accession Number:* 20080612-0204.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 02, 2008.

*Docket Numbers:* ER08-889-001.



*Applicants:* Carolina Power & Light Company.

*Description:* Progress Energy Carolinas, Inc submits supplemental information requested by the FERC Staff in support of original 4/30/08 filing under ER08-889.

*Filed Date:* 06/13/2008.

*Accession Number:* 20080616-0072.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 23, 2008.

*Docket Numbers:* ER08-1098-001; ER08-1099-001; ER08-1100-001.

*Applicants:* National Grid Generation LLC; National Grid-Port Jefferson Energy Cent; National Grid-Glenwood Energy Center, LLC.

*Description:* National Grid USA submits Supplements to the Notices of Succession for KeySpan Generation LLC *et al.* under ER08-1098 *et al.*

*Filed Date:* 06/13/2008.

*Accession Number:* 20080616-0076.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* ER08-1103-000.

*Applicants:* American Transmission Systems, Incorporated.

*Description:* American Transmission Systems Incorporated submits a Construction Agreement dated 5/22/08 with Cleveland Electric Illuminating Company *et al.*

*Filed Date:* 06/10/2008.

*Accession Number:* 20080612-0014.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 01, 2008.

*Docket Numbers:* ER08-1104-000.

*Applicants:* Arizona Public Service Company.

*Description:* Arizona Public Service Co submits proposed revisions to their FERC Electric Tariff, Volume 3.

*Filed Date:* 06/10/2008.

*Accession Number:* 20080612-0015.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 01, 2008.

*Docket Numbers:* ER08-1105-000.

*Applicants:* TFS Capital LLC.

*Description:* TFS Capital LLC submits a notice of cancellation of FERC Electric Tariff, Original Volume 1.

*Filed Date:* 06/12/2008.

*Accession Number:* 20080613-0046.

*Comment Date:* 5 p.m. Eastern Time on Thursday, July 03, 2008.

*Docket Numbers:* ER08-1106-000.

*Applicants:* MATL LLP.

*Description:* MATL LLP submits amendments to Attachment L of their Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume 1 to become effective 8/12/08 under ER08-1106.

*Filed Date:* 06/13/2008.

*Accession Number:* 20080616-0086.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

*Docket Numbers:* ER08-1107-000.

*Applicants:* The American Electric Power Service Corp.

*Description:* American Electric Power submits a second revisions to the Interconnection and Local Delivery Service Agreement 1419 between the Village of Carey and AEP under ER08-1107.

*Filed Date:* 06/13/2008.

*Accession Number:* 20080616-0075.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 07, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA07-36-002.

*Applicants:* South Carolina Electric & Gas Company.

*Description:* Attachment L Compliance Filing of South Carolina Electric & Gas Company.

*Filed Date:* 06/12/2008.

*Accession Number:* 20080612-5098.

*Comment Date:* 5 p.m. Eastern Time on Thursday, July 03, 2008.

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**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8-14177 Filed 6-23-08; 8:45 am]

**BILLING CODE 6717-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-R01-OW-2008-0215; FRL-8683-8]

### Massachusetts Marine Sanitation Device Standard—Notice of Determination

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

**ACTION:** Notice of Determination.

**SUMMARY:** The Regional Administrator of the Environmental Protection Agency—New England Region, has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the state waters of Salem Sound in the towns of Manchester-by-the-Sea, Beverly, Danvers, Salem, and Marblehead.

**ADDRESSES:** *Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copy-righted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ann Rodney, U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114-2023. *Telephone:* (617) 918-0538. *Fax number:* (617) 918-1505. *E-mail address:* [Rodney.ann@epa.gov](mailto:Rodney.ann@epa.gov).

**SUPPLEMENTARY INFORMATION:** On May 16, 2008, EPA published a notice that the Commonwealth of Massachusetts had petitioned the Regional Administrator, Environmental

Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the state waters of Manchester-by-the-Sea, Beverly, Danvers, Salem, and Marblehead. No comments were received on this petition.

The petition was filed pursuant to section 312(f)(3) of Public Law 92-500, as amended by Public Laws 95-217 and 100-4, for the purpose of declaring

these waters a No Discharge Area (NDA).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except

that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

This Notice of Determination is for the state waters of Manchester-by-the-Sea, Beverly, Danvers, Salem, and Marblehead, collectively referred to as Salem Sound. The NDA includes:

Waterbody/General Area	Latitude	Longitude
Southern Landward boundary—Marblehead town line .....	42°28'43" N	70°52'45" W
Southern Seaward Boundary— .....	42°26'33" N	70°49'05" W
Eastern Boundary—Halfway Rock .....	42°30'10" N	70°46'30" W
Northern Seaward boundary—3 miles off Eastern Point .....	42°33'03" N	70°36'06" W
Northern Landward boundary—Manchester town line .....	42°34'20" N	70°42'52" W

The NDA boundary includes the municipal waters of Manchester-by-the-Sea, Beverly, Danvers, Salem, and Marblehead and extends to the boundary between state and federal waters. This area includes Bakers Island, Crowninshield Island, Cat Island, Children's Island, Great and Little Misery Islands, and House Island.

The information submitted to EPA by the Commonwealth of Massachusetts

certifies that there are eight pumpout facilities located in this area. A list of the facilities, with phone numbers, locations, and hours of operation is appended at the end of this determination.

Based on the examination of the petition, its supporting documentation, and information from site visits conducted by EPA New England staff, EPA has determined that adequate

facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this determination.

This determination is made pursuant to Section 312(f)(3) of Public Law 92-500, as amended by Public Laws 95-217 and 100-4.

PUMPOUT FACILITIES WITHIN PROPOSED NO DISCHARGE AREA

Name	Location	Contact info.	Hours	Mean low water depth
Manchester Marine .....	Manchester .....	(978) 526-7911 VHF 72.	Mon-Thu-7 a.m.-6p.m.; Fri-Sun (+holidays), 7 a.m.-8 p.m.	6 ft.
Manchester Marine .....	Manchester .....	(978) 526-7911, VHF 72.	Mon-Thu-7 a.m.-6; p.m. Fri-Sun (+holidays), 7 a.m.-8 p.m.	N/A, Boat service.
Ferry Way Public Landing.	Beverly .....	(978) 921-6059, VHF 9.	Fri-Sun (+holidays), 8 a.m.-4 p.m. ....	10 ft.
Danversport Yacht Club.	Danvers (2 facilities) ..	(978) 774-8644 .....	Mon-Thu-8 a.m.-5 p.m.; Fri-Sat-8 a.m.-6 p.m.; Sun-8 a.m.-4 p.m.	6 ft.
Salem Waterfront (Winter Island).	Salem .....	(978) 741-0098 VHF 9.	Sat-Sun (+holidays), 9 a.m.-5 p.m. ....	N/A Boat service.
Congress St. Landing	Salem .....	(978) 741-0098, VHF 9.	24 hours/7 days a week .....	3 ft.
Ferry Lane—Harbormaster's office.	Marblehead .....	(781) 631-2386, VHF 16.	Mon-Fri, 9 a.m.-3 p.m. ....	N/A, Boat Service.
Cliff Street Boatyard ...	Marblehead .....	(781) 631-2386, VHF 16.	24 hours/7 days a week .....	9 ft.
*Danvers .....	Danvers .....	TBD .....	TBD .....	N/A, Boat service.
*Salem .....	Salem .....	TBD .....	TBD .....	N/A, Boat service.

\* = Pending facilities.

Dated: June 17, 2008.

**Robert W. Varney,**

*Regional Administrator, Region 1.*

[FR Doc. E8-14251 Filed 6-23-08; 8:45 a.m.]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8683-9; Docket ID No. EPA-HQ-ORD-2008-0058]

### Draft Toxicological Review of Carbon Tetrachloride: In Support of the Summary Information in the Integrated Risk Information System (IRIS)

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

**ACTION:** Notice of Listening Session.

**SUMMARY:** EPA is announcing a listening session to be held on July 16, 2008, during the public comment period for the external review draft document entitled, "Toxicological Review of Carbon Tetrachloride: In Support of Summary Information on the Integrated Risk Information System (IRIS)." This listening session is a new step in EPA's revised process, announced on April 10, 2008, for development of human health assessments for inclusion on IRIS. The purpose of the listening session is to allow all interested parties to present scientific and technical comments on draft IRIS health assessments to EPA and other interested parties during the public comment period and prior to the external peer review meeting. EPA welcomes the scientific and technical comments that will be provided to the Agency by the listening session participants. The comments will be considered by the Agency as it revises the draft assessment in response to the independent external peer review and public comments. All presentations will become part of the official and public record.

The EPA's draft assessment and peer review charge are available via the Internet on the National Center for Environmental Assessment's (NCEA) home page under the Recent Additions and the Data and Publications menus at <http://www.epa.gov/ncea>.

**DATES:** The listening session on the draft IRIS health assessment for carbon tetrachloride will be held on July 16, 2008, beginning at 9 a.m. and ending at 4 p.m., Eastern Daylight Time. If you wish to make a presentation at the listening session, you should register by July 9, 2008, and indicate that you wish to make oral comments at the session, and indicate the length of your presentation. At the time of your registration, please indicate if you

require audio-visual aid (e.g., lap top and slide projector). In general, each presentation should be no more than 30 minutes. If, however, there are more requests for presentations than the allotted time will allow, then the time limit for each presentation will be adjusted accordingly. Participants who have registered to attend may also register at the beginning of the listening session to make comments. The order of the presentations will follow the order of registration. A copy of the agenda for the listening session will be available at the meeting.

The public comment period for review of this draft assessment was announced previously in the **Federal Register** (FR) (73 FR 29502) on May 21, 2008. As stated in that FR notice, the public comment period began on May 21, 2008, and ends July 21, 2008. Any technical comments submitted during the public comment period should be in writing and must be received by EPA by July 21, 2008, according to the procedures outlined below. Only those public comments submitted using the procedures identified in the May 21, 2008 FR notice by the July 21, 2008, deadline will be provided to the independent peer-review panel prior to the peer-review meeting. The date and logistics for the peer-review meeting will be announced later in a separate FR notice.

Listening session participants who wish to have their comments available to the external peer reviewers should also submit written comments during the public comment period using the detailed and established procedures included in the aforementioned FR notice (May 21, 2008). Comments submitted to the docket prior to the end of the public comment period will be submitted to the external peer reviewers and considered by EPA in the disposition of public comments. Comments received in the docket after the public comment period closes must still be submitted to the docket but will not be submitted to the external peer reviewers.

**ADDRESSES:** The listening session on the draft carbon tetrachloride assessment will be held at the EPA offices at Two Potomac Yard (North Building), 7th Floor, Room 7100, 2733 South Crystal Drive, Arlington, Virginia 22202. To attend the listening session, register by July 9, 2008, via e-mail at [ross.christine@epa.gov](mailto:ross.christine@epa.gov) (*subject line:* Carbon tetrachloride listening session), by phone: 703-347-8592, or by faxing a registration request to 703-347-8689 (please reference the "Carbon Tetrachloride Listening Session" and

include your name, title, affiliation, full address and contact information). Please note that to gain entrance to this EPA building to attend the meeting, attendees must have photo identification with them and must register at the guard's desk in the lobby. The guard will retain your photo identification and will provide you with a visitor's badge. At the guard's desk, attendees should give the name Christine Ross and the telephone number, 703-347-8592, to the guard on duty. The guard will contact Ms. Ross who will meet you in the reception area to escort you to the meeting room. Upon your exit from the building please return your visitor's badge and you will receive the photo identification that you provided.

A teleconference line will also be available for registered attendees/speakers. The teleconference number is 866-299-3188 and the access code is 7033478503, followed by the pound sign (#). The teleconference line will be activated at 8:45 am, and you will be asked to identify yourself and your affiliation at the beginning of the call.

*Information on Services for Individuals with Disabilities:* For information on access or services for individuals with disabilities, please contact Christine Ross at 703-347-8592 or [ross.christine@epa.gov](mailto:ross.christine@epa.gov). To request accommodation of a disability, please contact Ms. Ross, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

**FOR FURTHER INFORMATION CONTACT:** For information on the public listening sessions, please contact Christine Ross, IRIS Staff, National Center for Environmental Assessment, (8601P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone:* 703-347-8592; *facsimile:* 703-347-8689; or *e-mail:* [ross.christine@epa.gov](mailto:ross.christine@epa.gov). If you have questions about the draft carbon tetrachloride assessment, contact Susan Rieth, IRIS Staff, National Center for Environmental Assessment, (8601P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone:* 703-347-8582; *facsimile:* 703-347-8689; or *e-mail:* [rieth.susan@epa.gov](mailto:rieth.susan@epa.gov).

**SUPPLEMENTARY INFORMATION:** This listening session is a new step in EPA's revised process, announced on April 10, 2008, for development of human health assessments for inclusion on IRIS. The new process is posted on the NCEA home page under the Recent Additions menu at <http://www.epa.gov/ncea>. Two listening sessions are scheduled under the new IRIS process. The first is during the public review of the draft

assessment that includes only qualitative discussion. The second session is during the public review of the externally peer-reviewed draft assessment; if feasible, this draft will include both qualitative and quantitation elements (i.e., a "complete draft"). All IRIS assessments that are at the document development stage will follow the revised process, which includes the two listening sessions. However, when EPA initiated the new IRIS process, the draft assessment for carbon tetrachloride had already completed document development and been through several rounds of internal review. Therefore, EPA will only hold one listening session during the public review and comment period of the externally peer-reviewed draft.

Dated: June 18, 2008.

**Joseph A. DeSantis,**

*Acting Director, National Center for Environmental Assessment.*

[FR Doc. E8-14226 Filed 6-23-08; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-RCRA-2006-0796; FRL-8684-3]

### Notice of Scientific Peer Review Teleconference on the Draft "Human and Ecological Risk Assessment of Coal Combustion Wastes"

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA or the Agency) is announcing that a telephone conference will be held with the peer reviewers (who are reviewing the draft *Human and Ecological Risk Assessment of Coal Combustion Wastes* or draft risk assessment) and interested members of the public. During this teleconference, the Agency will accept oral comments from the public on technical aspects of the draft risk assessment.

**DATES:** The teleconference will be held on Tuesday, July 8, 2008, beginning at 12 Noon Eastern Time. Requests from members of the public who wish to make oral presentations during the teleconference will be accepted through Thursday, July 3, 2008.

**ADDRESSES:** Telephone conference call only. See the following **SUPPLEMENTARY INFORMATION** section for information on how to submit an oral statement during the teleconference.

**FOR FURTHER INFORMATION:** For general information on this teleconference, contact Ms. Thea Johnson at (703) 308-

0050, or [johnson.thea@epa.gov](mailto:johnson.thea@epa.gov), Office of Solid Waste (Mailcode: 5307P), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Any member of the public who wishes to make an oral statement during the teleconference (10 minutes or less) must pre-register according to the instructions outlined in the following **SUPPLEMENTARY INFORMATION** section.

#### SUPPLEMENTARY INFORMATION:

**Background:** On August 29, 2007, EPA published a Notice of Data Availability (NODA) in the **Federal Register** that announced the availability of new information and data contained in three documents regarding the management of coal combustion wastes (CCW) in landfills and surface impoundments. (72 FR 49714.) The Agency sought public comments on how, if at all, this additional information should affect EPA's decisions as it continues to follow-up on its Regulatory Determination for CCW disposed of in landfills and surface impoundments. The three documents that the Agency requested comment on included: The joint U.S. Department of Energy (DOE) and EPA report entitled, *Coal Combustion Waste Management at Landfills and Surface Impoundments, 1994-2004*; the draft risk assessment conducted by EPA on the management of CCW in landfills and surface impoundments entitled, *Human and Ecological Risk Assessment of Coal Combustion Wastes*; and the EPA's damage case assessment. (The Agency also included in the Docket to the NODA a rulemaking petition submitted by a number of citizens' groups and several approaches, one prepared by the electric utility industry and the other prepared by a number of citizens' groups regarding the management of CCW). The Agency solicited information regarding the damage cases, the results of the risk assessment, and the new liner and groundwater monitoring information from the DOE/EPA report. EPA also requested comment on the draft risk assessment document to help inform a planned peer review, with which this notice is associated. In addition to the draft risk assessment, EPA will also make available to the peer reviewers the public comments regarding the draft risk assessment that were submitted during the comment period, which closed on February 11, 2008.

**Availability of Teleconference Materials:** A draft agenda and other supporting materials, including the teleconference number and instructions on how to access the teleconference telephone line will be posted on the

Science Inventory Web site no later than Thursday, July 3, 2008. The Science Inventory Web site can be accessed at <http://www.epa.gov/si>. Additional information related to the Regulatory Determination for CCW disposed of in landfills and surface impoundments can be found in docket EPA-HQ-RCRA-2006-0796, available online at <http://www.regulations.gov>.

#### *Procedures for Providing Public Input:*

Interested members of the public may make an oral statement to the independent peer reviewers during the teleconference. Oral Statements: Individuals or groups requesting to make oral presentations to the independent peer reviewers on this public telephone conference will be limited to 10 minutes per speaker. Comments will be accepted from only one speaker per organization.

#### *Procedures for Pre-Registration:*

Industrial Economics, Incorporated (IEc), an EPA contractor for external scientific review, will convene the independent experts, organize, and conduct the peer review teleconference. To participate in this teleconference, register by Thursday, July 3, 2008 by visiting <http://www.epa.gov/epaoswer/other/fossil/tele-form.htm> or by sending an e-mail to [register@indecon.com](mailto:register@indecon.com). Please reference "CCW Peer Review Telephone Conference" and include your name, title, affiliation, full address and contact information. Due to the limited number of telephone lines, pre-registration is strongly recommended. You may also register by calling the registration telephone line at (703) 308-0436. The deadline for pre-registration is Thursday, July 3, 2008. If telephone lines are available after the pre-registration deadline, then, registrations will continue to be accepted after this date.

**Accessibility:** For information on services for individuals with disabilities, please leave a detailed message, as well as contact information at (703) 308-0436 or e-mail your request to [register@indecon.com](mailto:register@indecon.com).

Dated: June 18, 2008.

**Matt Hale,**

*Director, Office of Solid Waste.*

[FR Doc. E8-14234 Filed 6-23-08; 8:45 am]

BILLING CODE 6560-50-P

## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Regular Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the

Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 10, 2008, from 9 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883-4009, TTY (703) 883-4056.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

#### Open Session

##### A. Approval of Minutes

- June 12, 2008.

##### B. New Business

- Merger of First AgCredit, FCS and its subsidiaries with and into Capital Farm Credit, ACA.

##### C. Reports

- OE Quarterly Report.

#### Closed Session \*

- Update on OE Oversight Activities.

Dated: June 19, 2008.

**Roland E. Smith,**

Secretary, Farm Credit Administration Board.  
[FR Doc. 08-1386 Filed 6-20-08; 12:58 pm]

**BILLING CODE 6705-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### FDIC Advisory Committee on Economic Inclusion (Come-IN); Notice of Meeting

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of Open Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Economic Inclusion, which will be held in Washington, DC. The Advisory Committee will provide advice and

recommendations on initiatives to expand access to banking services by underserved populations.

**DATES:** Wednesday, July 9, 2008, from 8:30 a.m. to 12 noon.

**ADDRESSES:** The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898-7043.

#### SUPPLEMENTARY INFORMATION:

*Agenda:* The agenda will be focused on strategies for encouraging mortgage lending for low- and moderate-income households. The agenda may be subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

*Type of Meeting:* The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562-6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting.

This Come-IN meeting will be Webcast live via the Internet at: <http://www.vodium.com/goto/dic/advisorycommittee.asp>. This service is free and available to anyone with the following systems requirements: <http://www.vodium.com/home/sysreq.html>. Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at [http://www.adobe.com/shockwave/download/download.cgi?P1\\_Prod\\_Version=ShockwaveFlash](http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash). Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed internet connection is recommended. The Come-IN meeting videos are made available on-demand approximately two weeks after the event.

Dated: June 19, 2008.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

Committee Management Officer.

[FR Doc. E8-14198 Filed 6-23-08; 8:45 am]

**BILLING CODE 6714-01-P**

## FEDERAL RESERVE SYSTEM

### Government in the Sunshine; Meeting Notice

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11:30 a.m., June 26, 2008.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets, NW., Washington, DC 20551

**STATUS:** Open.

We ask that you notify us in advance if you plan to attend the open meeting and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling (202) 452-2474 or you may register online. You may pre-register until close of business (June 25, 2008). You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call (202) 452-2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202-452-3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202-263-4869.

**PRIVACY ACT NOTICE:** Providing the information requested is voluntary; however, failure to provide your name, date of birth, and social security number or passport number may result in denial of entry to the Federal Reserve Board. This information is solicited pursuant to Sections 10 and 11 of the Federal Reserve Act and will be used to facilitate a search of law enforcement databases to confirm that no threat is posed to Board employees or property. It may be disclosed to other persons to evaluate a potential threat. The information also may be provided to law enforcement agencies, courts and others, but only to the extent necessary to investigate or prosecute a violation of law.

\* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

**MATTERS TO BE CONSIDERED:****Discussion Agenda:**

1. Notice of Proposed Rulemaking Implementing the Basel II Standardized Approach in the United States.

*Note:* 1. The staff memo to the Board will be made available to the public in paper and the background material will be made available on a computer disc in Word format. If you require a paper copy of the document, please call Penelope Beattie on 202-452-3982.

2. This meeting will be recorded for the benefit of those unable to attend. Computer discs (CDs) will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for \$4 per disc by calling 202-452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**FOR MORE INFORMATION PLEASE CONTACT:** Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202-452-2955.

**SUPPLEMENTARY INFORMATION:** You may call 202-452-3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at <http://www.federalreserve.gov> for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: June 19, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 08-1382 Filed 6-20-08; 9:24 am]

**BILLING CODE 6210-01-P**

**FEDERAL TRADE COMMISSION****Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension**

**AGENCY:** Federal Trade Commission ("Commission" or "FTC").

**ACTION:** Notice.

**SUMMARY:** The FTC is seeking public comments on its proposal to extend through July 31, 2011, the current Paperwork Reduction Act ("PRA") clearance for information collection requirements contained in the Children's Online Privacy Protection Act Rule ("COPPA Rule"), which will expire on July 31, 2008. The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the PRA.

**DATES:** Comments must be submitted on or before July 24, 2008.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to "FTC COPPA PRA Comment: FTC File No. P084511" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered to the following address: Federal Trade Commission, Room H-135 (Annex J), 600 Pennsylvania Ave., N.W., Washington, D.C. 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. If, however, the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled "Confidential."<sup>1</sup>

Comments filed in electronic form should be submitted by following the instructions on the web-based form at (<https://secure.commentworks.com/ftc-COPPARule>). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the (<https://secure.commentworks.com/ftc-COPPARule>) weblink. If this notice appears at ([www.regulations.gov](http://www.regulations.gov)), you may also file an electronic comment through that website. The Commission will consider all comments that [www.regulations.gov](http://www.regulations.gov) forwards to it.

All comments should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC website, to the extent practicable, at [www.ftc.gov](http://www.ftc.gov). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC

<sup>1</sup> Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at (<http://www.ftc.gov/ftc/privacy.htm>).

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information regarding this proceeding should be addressed to Mamie Kresses, (202) 326-2070, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, 600 Pennsylvania Ave., N.W., Mail Drop NJ-3212, Washington, D.C. 20580.

**SUPPLEMENTARY INFORMATION:** On March 26, 2008, the FTC sought comment on the information collection requirements associated with the COPPA Rule, 16 CFR Part 312 (OMB Control Number 3084-0117). 73 FR 16015. No comments were received. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501-3521, the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before July 24, 2008.

**Estimated annual hours burden:**

1,900 hours

(a) *Disclosure Requirements:* 1,800 hours

The COPPA Rule contains certain statutorily-required notice requirements, which constitute a "collection of information" under the PRA:

(1) the Rule requires each website and online service directed to children,<sup>2</sup> and any website or online service with actual knowledge that it is collecting personal information from children, to provide notice of how it collects, uses, and discloses such information and, with exceptions, to obtain the prior consent of the child's parent in order to engage in such collection, use, and disclosure;

(2) the Rule requires the operator to provide the parent with notice of the specific types of personal information being collected from the child, to give the parent the opportunity to forbid the operator at any time from collecting, using, or maintaining such information, and to provide reasonable means for the parent to review the information;

(3) the Rule requires operators to obtain "verifiable parental consent" prior to collecting, using, or disclosing children's personal information;

(4) the Rule requires website and online service operators to establish

<sup>2</sup> "Child" is defined under the statute and implementing Rule as an individual under thirteen years of age. 15 U.S.C. 6501(2); 16 CFR 312.2.

procedures that protect the confidentiality, security, and integrity of personal information collected from children; and

(5) the Rule requires operators to provide reasonable means for the parent to review the information.

The FTC staff retains its estimate that roughly 30 new web entrants each year will fall within the Rule's coverage and that, on average, new entrants will spend approximately 60 hours crafting a privacy policy, designing mechanisms to provide the required online privacy notice and, where applicable, the direct notice to parents.<sup>3</sup> Accordingly, staff estimates that complying with the Rule's disclosure requirements will require approximately 1,800 hours (30 new web entrants x 60 hours per entrant). Consistent with prior estimates, FTC staff estimates that the time spent on compliance would be apportioned five to one between legal (lawyers or similar professionals) and technical (computer programmers) personnel. Staff therefore estimates that lawyers or similar professionals who craft privacy policies will account for 1,500 of the 1,800 hours required. Computer programmers responsible for posting privacy policies and implementing direct notices and parental consent mechanisms will account for the remaining 300 hours.

Website operators that have previously created or adjusted their sites to comply with the Rule will incur no further burden associated with the Rule, unless they opt to change their policies and information collection in ways that will further invoke the Rule's provisions. Moreover, staff believes that existing COPPA-compliant operators who introduce additional sites beyond those they already have created will incur minimal, if any, incremental PRA burden. This is because such operators already have been through the start-up phase and can carry over the results of that to the new sites they create.

(b) *Reporting Requirements for Safe Harbor Applicants:* 100 hours

Operators can comply with the Rule by meeting the terms of industry self-regulatory guidelines that the Commission approves after notice and

comment.<sup>4</sup> While the submission of industry self-regulatory guidelines to the agency is voluntary, the Rule includes specific reporting requirements that all safe harbor applicants must provide to receive Commission approval. Staff retains its estimate that it would require, on average, 265 hours per new safe harbor program applicant to prepare and submit its safe harbor proposal in accordance with Section 312.10(c) of the Rule. Industry sources have confirmed that this estimate is reasonable and advised that all of this time would be attributable to the efforts of lawyers. Given that several safe harbor programs are already available to website operators, FTC staff believes that it is unlikely that more than one additional safe harbor applicant will submit a request within the next three years of PRA clearance sought. Thus, annualized burden attributable to this requirement would be approximately 85 hours per year (265 hours ÷ 3 years) or, roughly, 100 hours. Staff believes that most of the records submitted with a safe harbor request would be those that these entities have kept in the ordinary course of business, and that any incremental effort associated with maintaining the results of independent assessments or other records under Section 312.10(d)(3) also would be in the normal course of business. In accordance with the regulations implementing the PRA, the burden estimate excludes effort expended for these activities. 5 CFR 1320.3(b)(2).

Accordingly, FTC staff estimates that total burden per year for disclosure requirements affecting new web entrants and reporting requirements for safe harbor applications would be approximately 2,000 hours, rounded to the nearest thousand.

**Labor costs:** Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Staff conservatively assumes hourly rates of \$150 and \$35, respectively, for lawyers or similar professionals and computer programmers.<sup>5</sup> Based on these inputs,

<sup>4</sup> See Section 312.10(c). Approved self-regulatory guidelines can be found on the FTC's website at ([http://www.ftc.gov/privacy/privacyinitiatives/childrens\\_shp.html](http://www.ftc.gov/privacy/privacyinitiatives/childrens_shp.html)).

<sup>5</sup> FTC staff estimates average legal costs at \$150 per hour, which is roughly midway between Bureau of Labor Statistics (BLS) mean hourly wages shown for attorneys (approximately \$55) in the most recent whole-year data available online (2006) and what staff believes may more generally reflect hourly attorney costs (\$250) associated with Commission information collection activities. The \$35 estimate for computer programmers is also conservatively based on the most recent whole-year data available online from the BLS (2006 National Compensation Survey and 2006 Occupational Employment and Wage Statistics).

staff further estimates that associated annual labor costs for new entrants would be \$235,000 [(1,500 hours x \$150 per hour for legal) + (300 hours x \$35 per hour for computer programmers)] and \$15,000 for safe harbor applicants (100 hours per year x \$150 per hour), for a total labor cost of \$250,000.

**Non-labor costs:** Because websites will already be equipped with the computer equipment and software necessary to comply with the Rule's notice requirements, the sole costs incurred by the websites are the aforementioned estimated labor costs. Similarly, industry members should already have in place the means to retain and store the records that must be kept under the Rule's safe harbor recordkeeping provisions, because they are likely to have been keeping these records independent of the Rule.

David C. Shonka,

Acting General Counsel.

[FR Doc. E8-14148 Filed 6-23-08; 8:45 am]

BILLING CODE 6750-01-S

## GENERAL SERVICES ADMINISTRATION

### Privacy Act of 1974; Notice of Updated Systems of Records

**AGENCY:** General Services Administration.

**ACTION:** Notice.

**SUMMARY:** GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and compliant with OMB M-07-16. This notice is an updated Privacy Act system of records notice.

**DATES:** Effective July 24, 2008.

**FOR FURTHER INFORMATION CONTACT:** Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail [gsa.privacyact@gsa.gov](mailto:gsa.privacyact@gsa.gov).

**ADDRESSES:** GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

**SUPPLEMENTARY INFORMATION:** GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review, GSA is publishing an updated Privacy Act system of records notice. The revised system notice clarifies the authorities and practices regarding the collection and maintenance of information, but does not change individuals' rights to access or amend their records in the system of records. The updated system notice also

<sup>3</sup> Although staff cannot determine with any degree of certainty the number of new entrants potentially subject to the Rule, it believes its estimate is reasonable. The Commission received no comments challenging staff's prior PRA analyses in its prior requests for renewed clearance for the Rule or when it most recently sought comment on the Rule itself (70 FR 21107, 21109, April 22, 2005). Accordingly, staff retains those estimates for the instant PRA analysis. For the same reasons, staff retains its prior estimate of 60 hours per new entrant.

includes the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: June 12, 2008.

**Cheryl M. Paige,**

*Director, Office of Information Management.*

**GSA/CIO-1**

**SYSTEM NAME:**

Enterprise Level Identity Verification System (ELIVS).

**SYSTEM LOCATION:**

ELIVS comprises a Web based application and data is maintained in a secure server facility at GSA Central Office, located at 1800 F Street, NW., Washington, DC 20405. Additionally, some fingerprint data may be located in GSA facilities where staffed fingerprint collection stations (Live Scan system) have been established to handle the contractor Personal Identity Verification (PIV) process. Contact the System Manager for additional information.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who require routine access to agency facilities and information technology systems, including:

- a. Federal employees.
- b. Contractors.
- c. Child care workers and other temporary workers with similar access requirements.

The system does not apply to occasional visitors or short-term guests, to whom GSA facilities may issue local Facility Access Cards (FAC).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains information needed for issuing and maintaining HSPD-12 credentials and also access privilege information. Records may include:

- Employee/contractor/other worker full name
- Social Security Number (SSN)
- Date of birth
- Facial Image
- Fingerprints (within the Live Scan systems)
- Organization/office of assignment
- Company/agency name
- Telephone number
- ID card issuance and expiration dates
- ID card number
- Emergency responder designation
- Home address and work location
- Contract and supervisor information

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, 40 U.S.C. 121, 40 U.S.C. 582, 40 U.S.C. 3101, 44 U.S.C. 3501, 44 U.S.C. 3506, 44 U.S.C. 3602, E.O. 9397, and Homeland Security Presidential Directive 12 (HSPD-12).

**PURPOSE:**

The primary purposes of the system are:

To act as an authoritative source for GSA identities including employees, contractors, and other workers to verify that all persons requiring routine access to GSA facilities or using GSA information resources have sufficient background investigations and are permitted access, to track and manage HSPD-12 ID cards issued to persons who have routine access to GSA facilities and information systems, and to provide reports of identity data for administrative and staff offices to efficiently track and manage contractors.

**ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:**

System information may be accessed and used by:

a. GSA Personnel when needed for official business, including the Security Office, HSPD-12 Points of Contacts, and designated analysts and managers for official business; PIV card requesting officials and Human Resource Officers to track, verify, and update identity information of GSA personnel; and Regional Credential Officers (RCOs) to issue and track PIV ID cards;

b. To verify suitability of an employee or contractor before granting access to specific resources;

c. To disclose information to agency staff and administrative offices who may restructure the data for management purposes;

d. An authoritative source of identities for Active Directory and Lotus Notes and other GSA systems;

e. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body;

f. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

g. To a Federal, state, local, foreign, or tribal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision;

h. To the Office of Personnel Management (OPM), the Office of

Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes;

i. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record;

j. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant;

k. To the National Archives and Records Administration (NARA) for records management purposes;

l. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of 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 GSA 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 GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING RECORDS IN THE SYSTEM:**

**STORAGE:**

Computer records are stored on a secure server and accessed over the web using encryption software. Paper records, when created, are kept in file folders and cabinets in secure rooms. The Live Scan systems are kept in secure locations with limited access to authorized personnel only.

**RETRIEVABILITY:**

Records are retrievable by a combination of first name and last name. Group records are retrieved by organizational code.

**SAFEGUARDS:**

Computer records are protected by a password system. Paper records are stored in locked metal containers or in secured rooms when not in use. Information is released to authorized officials based on their need to know.

**RETENTION AND DISPOSAL:**

Records are disposed of as specified in the handbook, GSA Records Maintenance and Disposition System (CIO P 1820.1).



**SYSTEM MANAGER AND ADDRESS:**

Program Manager, HSPD-12 Program Management Office, General Services Administration, 1800 F Street, NW., Room 2208 Washington, DC 20405.

**NOTIFICATION PROCEDURE:**

An individual can determine if this system contains a record pertaining to him/her by sending a request in writing, signed, to the System Manager at the above address. When requesting notification of or access to records covered by this notice, an individual should provide his/her full name, date of birth, region/office, and work location. An individual requesting notification of records in person must provide identity documents sufficient to satisfy the custodian of the records that the requester is entitled to access, such as a government-issued photo ID.

**CONTESTING RECORD PROCEDURES:**

Rules for contesting the content of a record and appealing a decision are contained in 41 CFR 105-64.

**RECORD SOURCES CATEGORIES:**

The sources for information in the system are the individuals about whom the records are maintained, the supervisors of those individuals, existing GSA systems, sponsoring agency, former sponsoring agency, other Federal agencies, contract employer, former employer, and the U.S. Office of Personnel Management (OPM).

[FR Doc. E8-14199 Filed 6-23-08; 8:45 am]

BILLING CODE 6820-34-P

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**
**Agency for Healthcare Research and Quality**
**Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Assessing the Impact of the Patient Safety Improvement Corps (PSIC) Training Program." In accordance with

the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on April 16th, 2008 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

**DATES:** Comments on this notice must be received by July 24, 2008.

**ADDRESSES:** Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395-6974 (attention: AHRQ's desk officer) or by e-mail at [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427-1477, or by e-mail at [doris.lefkowitz@ahrq.hhs.gov](mailto:doris.lefkowitz@ahrq.hhs.gov).

**SUPPLEMENTARY INFORMATION:****Proposed Project**
*Assessing the Impact of the Patient Safety Improvement Corps (PSIC) Training Program*

AHRQ proposes to assess the impact of the PSIC training program. This three-week program was designed and implemented by AHRQ and the Veteran's Administration's (VA) National Center for Patient Safety (NCPS) to improve patient safety by training participants in various patient safety concepts, tools, information, and techniques. The PSIC program represents a new approach to training for AHRQ by focusing on disseminating patient safety information and building skill sets to ultimately foster a national network of individuals who support, promote, and speak a common language of patient safety. Participants have included representatives from State health departments, hospitals and health systems, Quality Improvement Organizations, and a very small number of other types of organizations. AHRQ will use an independent contractor to conduct the assessment of the PSIC training program. The goal of the assessment is to determine the extent to which the PSIC concepts, tools, information, and techniques have been used on the job by training participants

and successfully disseminated within and beyond the participating organizations, local areas, regions, and states. AHRQ is assessing the PSIC program pursuant to its authority under 42 U.S.C. 299(b) and 42 U.S.C. 299a(a) to evaluate its strategies for improving health care quality.

The assessment involves two Web-based questionnaires to examine post-training activities and patient safety outcomes of the training from multiple perspectives. One questionnaire is directed to training participants while the other is directed to leaders of the organizations from which the training participants were selected. Questionnaires will focus on the following topics: (1) Post-PSIC activities (including how PSIC material has been utilized in their home organizations, types of patient safety activities conducted post-PSIC, and number of people trained in some or all aspects of PSIC since their attendance); (2) barriers to and facilitators of the use of PSIC in the workplace; and (3) perceived outcomes of PSIC participation (e.g., improved patient safety; improved patient safety processes, standards, or policies; improved investigative and analytical processes and selection and implementation of patient safety interventions; improved patient safety culture; improved communications).

*Method of Collection*

All training participants and organizational leaders from participating organizations will be invited to respond to their corresponding Web-based questionnaire. Invitations will be sent via e-mail, using contact information previously collected by AHRQ and NCPS. Standard non response follow-up techniques, such as two reminder e-mails that include the link to the questionnaire, will be used. Individuals and organizations will be assured of the privacy of their responses.

*Estimated Annual Respondent Burden*

Exhibit 1 shows the estimated annualized burden hours for the respondent's time to participate in the study. The training participant questionnaire is estimated to require 30 minutes to complete and the organizational leader questionnaire is estimated to require 15 minutes to complete, resulting in a total burden of 169 hours.

EXHIBIT 1.—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Training participant questionnaire .....	300	1	30/60	150
Organizational leader questionnaire .....	75	1	15/60	19
Total .....	375	NA	NA	169

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to participate in the study. The total cost burden is estimated to be \$5,552.80.

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Training participant questionnaire .....	300	150	\$32.18 .....	\$4,827.00
Organizational leader questionnaire .....	75	19	\$38.20 .....	725.80
Total .....	375	169	NA .....	5,552.80

\* Based upon the mean of the average wages for health professionals for the training participant questionnaire and for executives, administrators, and managers for the organizational leader questionnaire presented in the National Compensation Survey: Occupational Wages in the United States, June 2005, U.S. Department of Labor, Bureau of Labor Statistics.

*Estimated Annual Costs to the Federal Government*

The total cost to the government for this activity is estimated to be \$127,442 to conduct the two one-time questionnaires and to analyze and present its results. This amount includes costs for developing the data collection tools (\$50,976); collecting the data (\$25,488); analyzing the data and reporting the findings (\$44,605); and administrative support activities (\$6,373).

*Request for Comments*

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research, quality improvement and information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and

included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 16, 2006.  
**Carolyn Clancy**,  
 Director.  
 [FR Doc. E8-14052 Filed 6-23-08; 8:45 am]  
**BILLING CODE 4160-90-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention; Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Postpartum Hemorrhage Among Women With an Undiagnosed Bleeding Disorder, Potential Extramural Project 2008-R-28**

*Correction:* This notice was published in the **Federal Register** on April 18, 2008, Volume 73, Number 76, page 21138. The aforementioned meeting has been rescheduled to the following:  
*Time and Date:* 1 p.m.–3 p.m., July 8, 2008 (Closed).

*For More Information Contact:* Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333. Telephone (404) 498-1194.

The Director, Management Analysis and Services Office, has been delegated

the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

**Diane Allen**,  
 Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.  
 [FR Doc. E8-14136 Filed 6-23-08; 8:45 am]  
**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

[OMB No.: 0970-0278]

**Submission for OMB Review; Comment Request**

*Title:* Reunification Procedures for Unaccompanied Alien Children.

*Description:* Description: Following the passage of the 2002 Homeland Security Act (Pub. L. 107-2 96), the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), is charged with the care and placement of unaccompanied alien children in Federal custody, and implementing a policy for the release of these children, when appropriate, upon the request of suitable sponsors while awaiting immigration proceedings. In order for ORR to make determinations

regarding the release of these children, the potential sponsors must meet certain conditions pursuant to section 462 of the Homeland Security Act and the *Flores v. Reno Settlement Agreement No. CV85 4544-RJK* (C.D. Cal. 1997). The proposed information collection

requests information to be utilized by ORR for determining the suitability of a sponsor/respondent for the release of a minor from ORR custody. The proposed instruments are the Sponsors Agreement to Conditions of Release, Verification of Release, Family Reunification Packet,

and the Authorization for Release of Information.

*Respondents:* Sponsors requesting release of unaccompanied alien children to their custody.

*Respondents:*

**Annual Burden Estimates**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Agreement .....	4,288	2	.0835	716
Verification of Release .....	4,288	1	.167	716
Family Reunification .....	4,288	18	.0416	3,122
Authorization .....	4,288	15	0.0222	1,428

Estimated Total Annual Burden Hours:

*Additional Information:*

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov).

*OMB Comment:*

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-6974, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: June 16, 2008.

**Robert Sargis,**

*Reports Clearance, Officer.*

[FR Doc. E8-14046 Filed 6-23-08; 8:45 am]

**BILLING CODE 4184-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2008-N-0345]

**Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and Requirements for Donor Testing, Donor Notification, and "Lookback"**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to FDA's regulation of current good manufacturing practice and related regulations for blood and blood components; and requirements for donor testing, donor notification, and "lookback."

**DATES:** Submit written or electronic comments on the collection of information by August 25, 2008.

**ADDRESSES:** Submit electronic comments on the collection of information to: <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm.

1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:**

Jonna Capezuto, Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Current Good Manufacturing Practice and Related Regulations for Blood and Blood Components; and Requirements for Donor Testing, Donor Notification, and “Lookback” (OMB Control Number 0910–0116)—Extension**

All blood and blood components introduced or delivered for introduction into interstate commerce are subject to section 351(a) of the Public Health Service Act (PHS Act) (42 U.S.C. 262). Section 351(a) requires that manufacturers of biological products, which include blood and blood components intended for further manufacture into injectable products, have a license, issued upon a demonstration that the product is safe, pure and potent and that the manufacturing establishment meets all applicable standards, including those prescribed in the FDA regulations designed to ensure the continued safety, purity, and potency of the product. In addition, under section 361 of the PHS Act (42 U.S.C. 264), by delegation from the Secretary of Health and Human Services, FDA may make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession.

Section 351(j) of the PHS Act states that the Federal Food, Drug, and Cosmetic (FD&C) Act also applies to biological products. Blood and blood components for transfusion or for further manufacture into injectable products are drugs, as that term is defined in section 201(g)(1) of the FD&C Act (21 U.S.C. 321(g)(1)). Because blood and blood components are drugs under the act, blood and plasma establishments must comply with the substantive provisions and related regulatory scheme of the FD&C Act. For example, under section 501 of the FD&C Act (21 U.S.C. 351(a)), drugs are deemed “adulterated” if the methods used in their manufacturing, processing, packing, or holding do not conform to current good manufacturing practice (CGMP) and related regulations.

The CGMP regulations (part 606) (21 CFR part 606) and related regulations implement FDA’s statutory authority to ensure the safety, purity, and potency of blood and blood components. The public health objective in testing human blood donors for evidence of infection due to communicable disease agents and in notifying donors is to prevent the

transmission of communicable disease. For example, the “lookback” requirements are intended to help ensure the continued safety of the blood supply by providing necessary information to users of blood and blood components and appropriate notification of recipients of transfusion who are at increased risk for transmitting human immunodeficiency virus (HIV) or hepatitis C virus (HCV) infection.

The information collection requirements in the CGMP, donor testing, donor notification, and “lookback” regulations provide FDA with the necessary information to perform its duty to ensure the safety, purity, and potency of blood and blood components. These requirements establish accountability and traceability in the processing and handling of blood and blood components and enable FDA to perform meaningful inspections. The recordkeeping requirements serve preventive and remedial purposes. The disclosure requirements identify the various blood and blood components and important properties of the product, demonstrate that the CGMP requirements have been met, and facilitate the tracing of a product back to its original source. The reporting requirements inform FDA of any deviations that occur and that may require immediate corrective action.

Under the reporting requirements, § 606.170(b), in brief, requires that facilities notify FDA’s Center for Biologics Evaluation and Research (CBER), as soon as possible after confirming a complication of blood collection or transfusion to be fatal. The collecting facility is to report donor fatalities, and the compatibility testing facility is to report recipient fatalities. The regulation also requires the reporting facility to submit a written report of the investigation within 7 days after the fatality. In fiscal years 2006 and 2007, FDA received, on average, 100 of these reports.

Section 610.40(c)(1)(ii) (21 CFR 610.40(c)(1)(ii)), in brief, requires that each donation dedicated to a single identified recipient be labeled as required under § 606.121 and with a label entitled “INTENDED RECIPIENT INFORMATION LABEL” containing the name and identifying information of the recipient.

Section 610.40(g)(2) (21 CFR 610.40(g)(2)) requires an establishment to obtain written approval from FDA to ship human blood or blood components for further manufacturing use prior to completion of testing for evidence of infection due to certain communicable disease agents.

Section 610.40(h)(2)(ii)(A) (21 CFR 610.40(h)(2)(ii)(A)), in brief, requires an establishment to obtain written approval from FDA to use or ship human blood or blood components found to be reactive by a screening test for evidence of certain communicable disease agent(s) or collected from a donor with a record of a reactive screening test. Furthermore, § 610.40(h)(2)(ii)(C) and (h)(2)(ii)(D) (21 CFR 610.40(h)(2)(ii)(C) and (h)(2)(ii)(D)), in brief, requires an establishment to label certain reactive human blood and blood components with the appropriate screening test results, and, if they are intended for further manufacturing use into injectable products, include a statement on the label indicating the exempted use specifically approved by FDA. Finally, § 610.40(h)(2)(vi) (21 CFR 610.40(h)(2)(vi)) requires each donation of human blood or blood components, excluding Source Plasma, that tests reactive by a screening test for syphilis and is determined to be a biological false positive to be labeled with both test results.

Section 610.42(a) (21 CFR 610.42(a)) requires a warning statement “indicating that the product was manufactured from a donation found to be reactive by a screening test for evidence of infection due to the identified communicable disease agent(s)” in the labeling for medical devices containing human blood or a blood component found to be reactive by a screening test for evidence of infection due to a communicable disease agent(s) or syphilis.

In brief, §§ 610.46 and 610.47 (21 CFR 610.46 and 610.47) require blood collecting establishments to establish, maintain, and follow an appropriate system for performing HIV and HCV prospective “lookback” when: (1) A donor tests reactive for evidence of HIV or HCV infection or (2) the collecting establishment becomes aware of other reliable test results or information indicating evidence of HIV or HCV infection (“prospective lookback”) (see §§ 610.46(a)(1) and 610.47(a)(1)). The requirement for “an appropriate system” requires the collecting establishment to design standard operating procedures (SOPs) to identify and quarantine all blood and blood components previously collected from a donor who later tests reactive for evidence of HIV or HCV infection, or when the collecting establishment is made aware of other reliable test results or information indicating evidence of HIV or HCV infection. Within 3 calendar days of the donor testing reactive by an HIV or HCV screening test or the collecting establishment

becoming aware of other reliable test results or information, the collecting establishment must, among other things, notify consignees to quarantine all identified previously collected in-date blood and blood components (§§ 610.46(a)(1)(ii)(B) and 610.47(a)(1)(ii)(B)) and, within 45 days, notify the consignees of supplemental test results, or the results of a reactive screening test if there is no available supplemental test that is approved for such use by FDA (§§ 610.46(a)(3) and 610.47(a)(3)).

Consignees also must establish, maintain, and follow an appropriate system for performing HIV and HCV "lookback" when notified by the collecting establishment that they have received blood and blood components previously collected from donors who later tested reactive for evidence of HIV or HCV infection, or when the collecting establishment is made aware of other reliable test results or information indicating evidence of HIV or HCV infection in a donor (§§ 610.46(b) and 610.47(b)). This provision for a system requires the consignee to establish SOPs for, among other things, notifying transfusion recipients of blood and blood components, or the recipient's physician of record or legal representative, when such action is indicated by the results of the supplemental (additional, more specific) tests or a reactive screening test if there is no available supplemental test that is approved for such use by FDA, or if under an investigational new drug application (IND) or an investigational device exemption (IDE), is exempted for such use by FDA. The consignee must make reasonable attempts to perform the notification within 12 weeks of receipt of the supplemental test result or receipt of a reactive screening test result when there is no available supplemental test that is approved for such use by FDA, or if under an IND or IDE, is exempted for such use by FDA (§§ 610.46(b)(3) and 610.47(b)(3)).

Section 630.6(a) (21 CFR 630.6(a)) requires an establishment to make reasonable attempts to notify any donor who has been deferred as required by § 610.41 (21 CFR 610.41), or who has been determined not to be eligible as a donor. Section 630.6(d)(1) requires an establishment to provide certain information to the referring physician of an autologous donor who is deferred based on the results of tests as described in § 610.41.

Under the recordkeeping requirements, § 606.100(b), in brief, requires that written SOPs be maintained for all steps to be followed in the collection, processing,

compatibility testing, storage, and distribution of blood and blood components used for transfusion and further manufacturing purposes. Section 606.100(c) requires the review of all records pertinent to the lot or unit of blood prior to release or distribution. Any unexplained discrepancy or the failure of a lot or unit of final product to meet any of its specifications must be thoroughly investigated, and the investigation, including conclusions and followup, must be recorded.

In brief, § 606.110(a) provides that the use of plateletpheresis and leukapheresis procedures to obtain a product for a specific recipient may be at variance with the additional standards for that specific product if, among other things, the physician certifies in writing that the donor's health permits plateletpheresis or leukapheresis. Section 606.110(b) requires establishments to request prior approval from CBER for plasmapheresis of donors who do not meet donor requirements. The information collection requirements for § 606.110(b) are approved under OMB control number 0910-0338 and, therefore, are not reflected in tables 1 and 2 of this document.

Section 606.151(e) requires that SOPs for compatibility testing include procedures to expedite transfusion in life-threatening emergencies; records of all such incidents must be maintained, including complete documentation justifying the emergency action, which must be signed by a physician.

So that each significant step in the collection, processing, compatibility testing, storage, and distribution of each unit of blood and blood components can be clearly traced, § 606.160 requires that legible and indelible contemporaneous records of each such step be made and maintained for no less than 10 years. Section 606.160(b)(1)(viii) requires records of the quarantine, notification, testing and disposition performed under the HIV and HCV "lookback" provisions. Furthermore, § 606.160(b)(1)(ix) requires a blood collection establishment to maintain records of notification of donors deferred or determined not to be eligible for donation, including appropriate followup. Section 606.160(b)(1)(xi) requires an establishment to maintain records of notification of the referring physician of a deferred autologous donor, including appropriate followup. Section 606.165, in brief, requires that distribution and receipt records be maintained to facilitate recalls, if necessary.

Section 606.170(a) requires records to be maintained of any reports of complaints of adverse reactions arising

as a result of blood collection or transfusion. Each such report must be thoroughly investigated, and a written report, including conclusions and followup, must be prepared and maintained. When an investigation concludes that the product caused the transfusion reaction, copies of all such written reports must be forwarded to and maintained by the manufacturer or collecting facility.

Section 610.40(g)(1) (21 CFR 610.40(g)(1)) requires an establishment to appropriately document a medical emergency for the release of human blood or blood components prior to completion of required testing.

In addition to the CGMP regulations in part 606, there are regulations in part 640 (21 CFR part 640) that require additional standards for certain blood and blood components as follows: Sections 640.3(a)(1), (a)(2), and (f); 640.4(a)(1) and (a)(2); 640.25(b)(4) and (c)(1); 640.27(b); 640.31(b); 640.33(b); 640.51(b); 640.53(b) and (c); 640.56(b) and (d); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.66; 640.71(b)(1); 640.72; 640.73; and 640.76(a) and (b). The information collection requirements and estimated burdens for these regulations are included in the part 606 burden estimates, as described in tables 1 and 2 of this document.

Respondents to this collection of information are licensed and unlicensed blood establishments that collect blood and blood components, including Source Plasma and Source Leukocytes, inspected by FDA, and other transfusion services inspected by Centers for Medicare and Medicaid Services (CMS). Based on information received from CBER's database systems, there are approximately 81 licensed Source Plasma establishments with multiple locations and approximately 2,000 registered blood collection establishments, for an estimated total of 2,081 establishments. Of these establishments, approximately 696 perform plateletpheresis and leukopheresis. These establishments annually collect approximately 28 million units of Whole Blood and blood components, including Source Plasma and Source Leukocytes, and are required to follow FDA "lookback" procedures. In addition, there are another 4,980 establishments that fall under the Clinical Laboratory Improvement Amendments of 1988 (formerly referred to as facilities approved for Medicare reimbursement) that transfuse blood and blood components.

The following reporting and recordkeeping estimates are based on information provided by industry, CMS,

and FDA experience. Based on information received from industry, we estimate that there are approximately 13 million donations of Source Plasma from approximately 2 million donors and approximately 15 million donations of Whole Blood, including approximately 300,000 (2 percent of 15 million) autologous donations, from approximately 8 million donors. Assuming each autologous donor makes an average of 2 donations, FDA estimates that there are approximately 150,000 autologous donors.

FDA estimates that approximately 5 percent (12,000) of the 240,000 donations that are donated specifically for the use of an identified recipient would be tested under the dedicated donors' testing provisions in § 610.40(c)(1)(ii).

Under § 610.40(g)(2) and (h)(2)(ii)(A), the only product currently shipped prior to completion of testing for evidence of certain communicable disease agents is a licensed product, Source Leukocytes, used in the manufacture of interferon, which requires rapid preparation from blood. Shipments of Source Leukocytes are pre-approved under a biologics license application and each shipment does not have to be reported to the agency. Based on information from CBER's database system, FDA receives less than 1 application per year from manufacturers of Source Leukocytes. However, for calculation purposes, we are estimating 1 application annually.

Under § 610.40(h)(2)(ii)(C) and (h)(2)(ii)(D), FDA estimates that each manufacturer would ship an estimated 1 unit of human blood or blood components per month (12 per year) that would require 2 labels; one as reactive for the appropriate screening test under § 610.40(h)(2)(ii)(C), and the other stating the exempted use specifically approved by FDA under § 610.40(h)(2)(ii)(D). According to CBER's database system, there are approximately 40 licensed manufacturers that ship known reactive human blood or blood components.

Based on information we received from industry, we estimate that approximately 18,000 donations: (1) Annually test reactive by a screening test for syphilis, (2) are determined to be biological false positives by additional testing, and (3) are labeled accordingly (§ 610.40(h)(2)(vi)).

Human blood or a blood component with a reactive screening test, as a component of a medical device, is an integral part of the medical device, e.g., a positive control for an in vitro diagnostic testing kit. It is usual and customary business practice for

manufacturers to include on the container label a warning statement that identifies the communicable disease agent. In addition, on the rare occasion when a human blood or blood component with a reactive screening test is the only component available for a medical device that does not require a reactive component, then a warning statement must be affixed to the medical device. To account for this rare occasion under § 610.42(a), we estimate that the warning statement would be necessary no more than once a year.

FDA estimates that approximately 3,500 repeat donors will test reactive on a screening test for HIV. We also estimate that an average of three components was made from each donation. Under §§ 610.46(a)(1)(ii)(B) and 610.46(a)(3), this estimate results in 10,500 (3,500 x 3) notifications of the HIV screening test results to consignees by collecting establishments for the purpose of quarantining affected blood and blood components, and another 10,500 (3,500 x 3) notifications to consignees of subsequent test results. We estimate an average of 10 minutes per notification of consignees.

Moreover, we estimate that § 610.46(b)(3) will require 4,980 consignees to notify transfusion recipients, their legal representatives, or physicians of record an average of 0.35 times per year resulting in a total number of 1,755 (585 confirmed positive repeat donors x 3) notifications. Under § 610.46(b)(3), we also estimate 1 hour to accommodate the time to gather test results and records for each recipient and to accommodate multiple attempts to contact the recipient.

Furthermore, we estimate that approximately 7,800 repeat donors per year would test reactive for antibody to HCV. Under §§ 610.47(a)(1)(ii)(B) and 610.47(a)(3), collecting establishments would notify the consignee 2 times for each of the 23,400 (7,800 x 3 components) components prepared from these donations, once for quarantine purposes and again with additional HCV test results for a total of 46,800 notifications as an annual ongoing burden. Under § 610.47(b)(3), we estimate that approximately 4,980 consignees would notify approximately 2,050 recipients or their physicians of record annually. Finally, we estimate 1.0 hours to complete notification.

Industry estimates that approximately 13 percent of 10 million potential donors (1.3 million donors) who come to donate annually are determined not to be eligible for donation prior to collection because of failure to satisfy eligibility criteria. It is the usual and customary business practice of

approximately 2,000 blood collecting establishments to notify onsite and to explain why the donor is determined not to be suitable for donating. Based on such available information, we estimate that two-thirds (1,333) of the 2,000 blood collecting establishments provided onsite additional information and counseling to a donor determined not to be eligible for donation as usual and customary business practice. Consequently, we estimate that only one-third, or 667, approximately, blood collecting establishments would need to provide, under § 630.6(a), additional information and onsite counseling to the estimated 430,000 (one-third of approximately 1.3 million) ineligible donors.

It is estimated that another 4.5 percent of 10 million potential donors (450,000 donors) are deferred annually based on test results. We estimate that currently approximately 95 percent of the establishments that collect 99 percent of the blood and blood components notify donors who have reactive test results for HIV, Hepatitis B Virus (HBV), HCV, Human T-Lymphotropic Virus (HTLV), and syphilis as usual and customary business practice. Consequently, 5 percent of the 2,081 establishments (104) collecting 1 percent (4,500) of the deferred donors (450,000) would notify donors under § 630.6(a).

As part of usual and customary business practice, collecting establishments notify an autologous donor's referring physician of reactive test results obtained during the donation process required under § 630.6(d)(1). However, we estimate that approximately 5 percent of the 2,000 blood collection establishments (100) may not notify the referring physicians of the estimated 2 percent of 150,000 autologous donors with the initial reactive test results (3,000) as their usual and customary business practice.

The recordkeeping chart reflects the estimate that approximately 95 percent of the recordkeepers, which collect 99 percent of the blood supply, have developed SOPs as part of their customary and usual business practice. Establishments may minimize burdens associated with CGMP and related regulations by using model standards developed by industries' accreditation organizations. These accreditation organizations represent almost all registered blood establishments.

Under § 606.160(b)(1)(ix), we estimate the total annual records based on the approximately 1.3 million donors determined not to be eligible to donate and each of the estimated 1.75 million (1.3 million + 450,000) donors deferred based on reactive test results for

evidence of infection because of communicable disease agents. Under § 606.160(b)(1)(xi), only the 2,000 registered blood establishments collect autologous donations and, therefore, are required to notify referring physicians. We estimate that 4.5 percent of the 150,000 autologous donors (6,750) will be deferred under § 610.41, which in turn will lead to the notification of their referring physicians.

FDA has concluded that the use of untested or incompletely tested but appropriately documented human blood or blood components in rare medical emergencies should not be prohibited. We estimate the recordkeeping under § 610.40(g)(1) to be minimal with one or fewer occurrences per year. The reporting of test results to the consignee in § 610.40(g) does not create a new burden for respondents because it is the usual and customary business practice

or procedure to finish the testing and provide the results to the manufacturer responsible for labeling the blood products.

The hours per response and hours per record are based on estimates received from industry or FDA experience with similar recordkeeping or reporting requirements.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
606.170(a)	353 <sup>5</sup>	1.20	424	0.5	212
606.170(b) <sup>2</sup>	100	1	100	20	2,000
610.40(c)(1)(ii)	2,081	5.77	12,000	0.08	960
610.40(g)(2)	1	1	1	1	1
610.40(h)(2)(ii)(A)	1	1	1	1	1
610.40(h)(2)(ii)(C) and (h)(2)(ii)(D)	40	12	480	0.2	96
610.40(h)(2)(vi)	2,081	8.65	18,000	0.08	1,440
610.42(a)	1	1	1	1	1
610.46(a)(1)(ii)(B)	2,000	5.25	10,500	0.17	1,785
610.46(a)(3)	2,000	5.25	10,500	0.17	1,785
610.47(b)(3)	4,980	0.41	2,050	1.0	2,050
610.47(a)(1)(ii)(B)	2,000	11.70	23,400	0.17	3,978
610.47(a)(3)	2,000	11.70	23,400	0.17	3,978
610.47(b)(3)	4,980	0.41	2,050	1.0	2,050
630.6(a) <sup>3</sup>	667	644.68	430,000	0.08	34,400
630.6(a) <sup>4</sup>	104	43.27	4,500	1.5	6,750
630.6(d)(1)	100	30	3,000	1	3,000
Total					64,487

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

<sup>2</sup>The reporting requirement in § 640.73, which addresses the reporting of fatal donor reactions, is included in the estimate for § 606.170(b).

<sup>3</sup>Notification of donors determined not to be eligible for donation based on failure to satisfy eligibility criteria.

<sup>4</sup>Notification of donors deferred based on reactive test results for evidence of infection due to communicable disease agents.

<sup>5</sup>Five percent of establishments that fall under the Clinical Laboratory Improvement Amendments of 1988 that transfuse blood and components and FDA-registered blood establishments (0.05 x 4,980 + 2,081).

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN<sup>1</sup>

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record-keeping	Total Annual Records	Hours per Record	Total Hours
606.100(b) <sup>2</sup>	353 <sup>5</sup>	1	353	24	8,472
606.100(c)	353 <sup>5</sup>	10	3,530	1	3,530
606.110(a) <sup>3</sup>	35 <sup>6</sup>	1	35	0.5	18
606.151(e)	353 <sup>5</sup>	12	4,236	0.083	352
606.160 <sup>4</sup>	353 <sup>5</sup>	793.20	280,000	0.75	210,000

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN<sup>1</sup>—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record-keeping	Total Annual Records	Hours per Record	Total Hours
606.160(b)(1)(viii)					
HIV consignee notification	2,000	10.50	21,000	.17	3,570
	4,980	4.21	21,000	.17	3,570
HCV consignee notification	2,000	23.40	46,800	.17	7,956
	4,980	9.4	46,800	.17	7,956
HIV recipient notification	4,980	0.35	1,755	.17	298
HCV recipient notification	4,980	0.41	2,050	.17	349
606.160(b)(1)(ix)	2,081	840.94	1,750,000	0.05	875,000
606.160(b)(1)(xi)	2,000	3.375	6,750	0.05	338
606.165	353 <sup>5</sup>	793.20	280,000	0.083	23,240
606.170(a)	353 <sup>5</sup>	12	4,236	1.00	4,236
610.40(g)(1)	2,081	1	2,081	0.50	1,041
Total					1,149,926

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

<sup>2</sup>The recordkeeping requirements in §§ 640.3(a)(1), 640.4(a)(1), and 640.66, which address the maintenance of SOPs, are included in the estimate for § 606.100(b).

<sup>3</sup>The recordkeeping requirements in § 640.27(b), which address the maintenance of donor health records for the plateletpheresis, are included in the estimate for § 606.110(a).

<sup>4</sup>The recordkeeping requirements in §§ 640.3(a)(2) and (f); 640.4(a)(2); 640.25(b)(4) and (c)(1); 640.31(b); 640.33(b); 640.51(b); 640.53(b) and (c); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.71(b)(1); 640.72; and 640.76(a) and (b), which address the maintenance of various records are included in the estimate for § 606.160.

<sup>5</sup>Five percent of establishments that fall under the Clinical Laboratory Improvement Amendments of 1988 that transfuse blood and components and FDA-registered blood establishments (0.05 x 4,980 + 2,081).

<sup>6</sup>Five percent of plateletpheresis and leukopheresis establishments (0.05 x 696).

Dated: June 17, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8-14248 Filed 6-23-08; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2008-N-0169]

#### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Infant Formula Recall Regulations

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget

(OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by July 24, 2008.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-6974, or e-mailed to [baguilar@omb.eop.gov](mailto:baguilar@omb.eop.gov). All comments should be identified with the OMB control number 0910-0188. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed

collection of information to OMB for review and clearance.

#### Infant Formula Recall Regulations—(OMB Control Number 0910-0188)—Extension

Section 412(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(e)) provides that if the manufacturer of an infant formula has knowledge that reasonably supports the conclusion that an infant formula processed by that manufacturer has left its control and may not provide the nutrients required in section 412(i) of the act or is otherwise adulterated or misbranded, the manufacturer must promptly notify the Secretary of Health and Human Services (the Secretary). If the Secretary determines that the infant formula presents a risk to human health, the manufacturer must immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, consistent with recall regulations and guidelines issued by the Secretary. Section 412(f)(2) of the act states that the Secretary shall by regulation prescribe the scope and extent of recalls



of infant formula necessary and appropriate for the degree of risk to human health presented by the formula subject to recall. FDA's infant formula recall regulations in part 107 (21 CFR part 107) implement these statutory provisions.

Section 107.230 requires each recalling firm to conduct an infant formula recall with the following elements: (1) Evaluate the hazard to human health, (2) devise a written recall strategy, (3) promptly notify each affected direct account (customer) about the recall, and (4) furnish the appropriate FDA district office with copies of these documents. If the recalled formula presents a risk to human health, the recalling firm must also request that each establishment that sells the recalled formula post (at point of purchase) a notice of the recall and

provide FDA with a copy of the notice. Section 107.240 requires the recalling firm to conduct an infant formula recall with the following elements: (1) Notify the appropriate FDA district office of the recall by telephone within 24 hours, (2) submit a written report to that office within 14 days, and (3) submit a written status report at least every 14 days until the recall is terminated. Before terminating a recall, the recalling firm is required to submit a recommendation for termination of the recall to the appropriate FDA district office and wait for written FDA concurrence (§ 107.250). Where the recall strategy or implementation is determined to be deficient, FDA may require the firm to change the extent of the recall, carry out additional effectiveness checks, and issue additional notifications (§ 107.260). In addition, to facilitate

location of the product being recalled, the recalling firm is required to maintain distribution records for at least 1 year after the expiration of the shelf life of the infant formula (§ 107.280).

The reporting and recordkeeping requirements described previously are designed to enable FDA to monitor the effectiveness of infant formula recalls in order to protect babies from infant formula that may be unsafe because of contamination or nutritional inadequacy or otherwise adulterated or misbranded. FDA uses the information collected under these regulations to help ensure that such products are quickly and efficiently removed from the market.

In the **Federal Register** of March 26, 2008 (73 FR 16018), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
107.230	2	1	2	4,500	9,000
107.240	2	1	2	1,482	2,964
107.250	2	1	2	120	240
107.260	1	1	1	650	650
Total					12,854

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities. No burden has been estimated for the recordkeeping requirement in § 107.280 because these records are maintained as a usual and customary part of normal business activities. Manufacturers keep infant formula distribution records for the prescribed period as a matter of routine business practice.

The reporting burden estimate is based on agency records, which show that there are five manufacturers of infant formula and that there have been, on average, two infant formula recalls per year for the past 3 years.

Dated: June 17, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8-14258 Filed 6-23-08; 8:45 am]

BILLING CODE 4160-01-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.

#### Novel Fluorinated Dmt-Tic Analogues for Use as PET Radiotracers

*Description of Technology:* Researchers at the NIH have developed fluorine-18 (<sup>18</sup>F) labeled analogues specific for the delta-opioid receptors. These radioligands include analogues of the Dmt-Tic pharmacophore, containing a delta-opioid receptor antagonist that may be useful for imaging opioid receptors expressed in lung malignant tumors or other peripheral tumors that express delta-opioid receptors. This methodology might be readily applicable to Dmt-Tic pharmacophoric ligands that exhibit dual antagonism for delta-/mu-opioid receptors.

Studies by the inventors have shown that injected radioligand failed to cross the blood-brain barrier (BBB) of rats; therefore, these compounds could serve as radiotracers for assessing and locating certain carcinomas that contain high

levels of delta-opioid receptors, such as lung, breast and/or colon cancers. Since there is an increasing demand of radioligands for in vivo imaging of peripheral opioid receptors, this technology has the potential of enhancing current practices of PET imaging in oncology.

Available for licensing are compositions and methods of locating delta- and/or mu-opioid receptors located in peripheral cancers, such as in lung, breast, and/or colorectal cancer, using opiate radioligands.

**Applications:** Non-invasive tool for screening lung, breast, and/or colorectal cancers. Diagnostic tool for use in PET imaging.

**Market:** For 2007, it was projected that close to 1.5 million Americans would develop cancer.

PET imaging is steadily becoming a technique of choice in oncology so many of these patients will likely undergo scans several times during their treatment to assess the stage of their disease. This is supported by rising sales of FDG, which are expected to reach \$933 million by 2012.

**Development Status:** Early stage.

**Inventors:** Lawrence H. Lazarus (NIEHS) *et al.*

**Relevant Publication:** KA Roth and JD Barchas. Small cell carcinoma cell lines contain opioid peptides and receptors. *Cancer* 1986 Feb 15;57(4):769-773.

**Patent Status:** U.S. Provisional Application No. 60/970,143 filed 05 Sep 2007 (HHS Reference No. E-317-2007/0-US-01).

**Licensing Status:** Available for licensing.

**Licensing Contact:** Charlene A. Sydnor, PhD.; 301-435-4689; [sydnorc@mail.nih.gov](mailto:sydnorc@mail.nih.gov).

**Collaborative Research Opportunity:** The NIEHS Laboratory of Pharmacology, Medicinal Chemistry Group, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Elizabeth Denholm, PhD., Director, NIEHS Office of Technology Transfer, at 919-541-0981 or [denholme@mail.nih.gov](mailto:denholme@mail.nih.gov) for more information.

### Novel Isoform of KCNH2 for the Treatment of Schizophrenia

**Description of Technology:** Researchers at the NIH report the discovery and characterization of a novel isoform of the voltage-gated potassium channel KCNH2. This novel isoform is shown to control neurological firing and has implication as a genetic risk factor for schizophrenia. It is highly expressed in the hippocampus of

schizophrenic patients and also in normal individuals who carry risk-associated alleles of KCNH2. This novel isoform may be a suitable target for drug development as is it minimally expressed in the heart with the potential to exert less adverse cardiovascular side-effects, which is often a consequence of currently available antipsychotic drugs.

Available for licensing and commercial development are nucleic acids, polypeptides and antibodies specific for this novel isoform, as well as methods of screening for therapeutic agents and predicting susceptibility to schizophrenia.

**Applications:** Potential new psychotherapeutic agent with less cardiac side-effects. Potential drug screening assay for identifying new psychotherapeutic drugs. Potential diagnostic tool for determining susceptibility of schizophrenia.

**Market:** Schizophrenia is among the most severe of the mental illnesses and has a lifetime prevalence of approximately 1% worldwide.

More than 2,000,000 Americans have schizophrenia and it accounts for 2.5% of U.S. health care costs and 75% of expenditures for long-term mental health.

**Development Status:** Early stage.

**Inventors:** Daniel R. Weinberger *et al.* (NIMH).

**Patent Status:** U.S. Provisional Application No. 60/920,220 filed 26 Mar 2007 (HHS Reference No. E-245-2006/0-US-01).

PCT Application No. PCT/US2008/057913 filed 21 Mar 2008 (HHS Reference No. E-245-2006/0-PCT-02).

**Licensing Status:** Available for licensing.

**Licensing Contact:** Charlene A. Sydnor, PhD.; 301-435-4689; [sydnorc@mail.nih.gov](mailto:sydnorc@mail.nih.gov).

**Collaborative Research Opportunity:** The NIMH Clinical Brain Disorders Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize potassium channel isoform associated with schizophrenia. Please contact Suzanne Winfield at 301-402-4324/[winfiels@mail.nih.gov](mailto:winfiels@mail.nih.gov) for more information.

Dated: June 13, 2008.

**Richard U. Rodriguez,**  
*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. E8-14257 Filed 6-23-08; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

**Name of Committee:** Center for Scientific Review Special Emphasis Panel; Clinical Research Grants in Diabetes, Endocrine and Metabolic Diseases.

**Date:** July 1-2, 2008.

**Time:** 8 a.m. to 8 p.m.

**Agenda:** To review and evaluate grant applications.

**Place:** National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

**Contact Person:** Stuart B. Moss, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, 301-435-1044, [mossstua@csr.nih.gov](mailto:mossstua@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

**Name of Committee:** Center for Scientific Review Special Emphasis Panel; Neurogenetics.

**Date:** July 8, 2008

**Time:** 11 a.m. to 1 p.m.

**Agenda:** To review and evaluate grant applications.

**Place:** National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

**Contact Person:** Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301-435-2212, [josephru@csr.nih.gov](mailto:josephru@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

**Name of Committee:** Center for Scientific Review Special Emphasis Panel; Small Business: Orthopaedics and Skeletal Biology.

**Date:** July 11, 2008.

**Time:** 8:30 a.m. to 5 p.m.

**Agenda:** To review and evaluate grant applications.

*Place:* Doubletree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

*Contact Person:* John P. Holden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301-496-8551, [holdenjo@csr.nih.gov](mailto:holdenjo@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflicts: Neuropharmacology.

*Date:* July 14–15, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Christine L. Melchior, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435-1713, [melchioc@csr.nih.gov](mailto:melchioc@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Neurodevices and Bioengineering.

*Date:* July 16, 2008.

*Time:* 11 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301-435-2212, [josephru@csr.nih.gov](mailto:josephru@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; AIDS Fellowship Review.

*Date:* July 29–August 1, 2008.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Hilary D. Sigmon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, (301) 594-6377, [sigmonh@csr.nih.gov](mailto:sigmonh@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflicts in Developmental Disabilities and Childhood-Origin Psychopathology.

*Date:* August 5–6, 2008.

*Time:* 9 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146,

MSC 7759, Bethesda, MD 20892, 301-594-3163, [champoum@csr.nih.gov](mailto:champoum@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

*Dated:* June 16, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-14043 Filed 6-23-08; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Degenerative and Dementing Disease of Aging.

*Date:* July 9, 2008.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20814, (Telephone Conference Call).

*Contact Person:* Bitu Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2c212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301-402-7701, [nakhaib@nia.nih.gov](mailto:nakhaib@nia.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Biochemical Risk Markers.

*Date:* July 25, 2008.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2c212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301-402-7704, [crucew@nia.nih.gov](mailto:crucew@nia.nih.gov). (Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

*Dated:* June 16, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-14044 Filed 6-23-08; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Interagency Autism Coordinating Committee.

The meeting will be open to the public, 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 inform the Contact Person listed below in advance of the meeting.

*Name of Committee:* Interagency Autism Coordinating Committee (IACC).

*Date:* July 15, 2008.

*Time:* 9 a.m. to 4 p.m.

*Agenda:* Review strategic planning workgroup comments on draft plan; discuss and approve draft strategic plan for autism spectrum disorder (ASD) research, summary of advances in ASD research, and process for implementation of strategic plan, report from Services Subcommittee; scientific presentation.

*Place:* Natcher Conference Center, National Institutes of Health, Rooms E1 and E2, 45 Center Drive, Bethesda, MD.

*Contact Person:* Tanya Pryor, Interagency Autism Coordinating Committee, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6187, MSC 9669, Bethesda, MD 20892-9669, (301) 443-7153, [pryort@mail.nih.gov](mailto:pryort@mail.nih.gov).

Any member of the public interested in presenting oral comments to the Committee should notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an

organization will be allowed to present oral comments and presentations will be limited to a maximum of five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their 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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. All visitors should be prepared to have their personal belongings inspected and to go through metal detection inspection. You are strongly encouraged to take public transportation to the NIH campus as there are very few visitor parking spaces available. If you must drive, short-term metered parking may be available near the Natcher Conference Center in Lot B. Natcher is a 5-minute walk from the Medical Center Station on the Red Line of the Metro.

A registration link and information about the about the IACC meeting will be available on the IACC Web site: <http://www.nimh.nih.gov/research-funding/scientific-meetings/recurring-meetings/iacc/events/index.shtml>.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 18, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-14265 Filed 6-23-08; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS-R9-MB-2008-N00164] [91100-3740-GRNT 7C]**

**Proposed Information Collection; OMB Control Number 1018-0100; North American Wetlands Conservation Act (NAWCA) Grant Programs**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC)

described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on September 30, 2008. 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.

**DATES:** You must submit comments on or before August 25, 2008.

**ADDRESSES:** Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); [hope\\_grey@fws.gov](mailto:hope_grey@fws.gov) (e-mail); or (703) 358-2269 (fax).

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Hope Grey by mail, fax, or e-mail (see ADDRESSES) or by telephone at (703) 358-2482.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The North American Waterfowl Management Plan (NAWMP) is a tripartite agreement among Canada, Mexico, and the United States to enhance, restore, and protect habitat to benefit waterfowl and other wetlands-associated wildlife. Because the NAWMP did not include a mechanism to provide for broadly based and sustained financial support for wetland conservation activities, Congress passed the North American Wetlands Conservation Act in 1989. The NAWCA promotes, through partnerships between the private and public sectors, long-term conservation of North American wetland ecosystems and the waterfowl and other migratory birds, fish, and wildlife that depend upon such habitat.

In addition to providing for a continuing and stable funding base, NAWCA establishes an administrative body, the North American Wetlands Conservation Council. It is made up of a State representative from each of the four flyways, three representatives from nonprofit wetlands conservation organizations, the Secretary of the Board of the National Fish and Wildlife Foundation, and the Director of the Fish and Wildlife Service. The Council recommends funding of select wetlands conservation project proposals to the Migratory Bird Conservation Commission.

There is a Standard and a Small Grants Program. Both are competitive grants programs and require that grant requests be matched by partner

contributions at no less than a 1-to-1 ratio. Funds from U.S. Federal sources may contribute to a project, but are not eligible as match.

The Standard Grants Program supports projects in Canada, the United States, and Mexico that involve long-term protection, restoration, and/or enhancement of wetlands and associated uplands habitats. In Mexico, partners may also conduct projects involving technical training, environmental education and outreach, organizational infrastructure development, and sustainable-use studies.

The Small Grants Program operates only in the United States. It supports the same type of projects and adheres to the same selection criteria and administrative guidelines as the U.S. Standard Grants Program. However, project activities are usually smaller in scope and involve fewer project dollars. Grant requests may not exceed \$75,000, and funding priority is given to grantees or partners new to the NAWCA Grants Program.

We publish notices of funding availability on the Grants.gov website (<http://www.grants.gov>) as well as in the Catalog of Federal Domestic Assistance. To compete for grant funds, partnerships submit applications that describe in substantial detail project locations, project resources, future benefits, and other characteristics that meet the standards established by the Council and the requirements of NAWCA. Materials that describe the program and assist applicants in formulating project proposals for Council consideration are available on our website at <http://www.fws.gov/birdhabitat/Grants/NAWCA>. Persons who do not have access to the Internet may obtain instructional materials by mail. We have not made any major changes in the scope and general nature of the instructions since the OMB first approved the information collection in 1999.

**II. Data**

*OMB Control Number:* 1018-0100.

*Title:* North American Wetlands Conservation Act (NAWCA) Grant Programs.

*Service Form Number(s):* None.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Households and individuals; businesses and other for-profit organizations; educational organizations; not-for-profit institutions; and Federal, State, local and/or tribal governments.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion. The Small Grants Program has one project proposal period per year and the Standard Grants Program has two per year. Annual reports are due 90 days after the anniversary date of the grant agreement. Final reports are due 90 days after the end of the project period. The project period is 2 years.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
Small Grants – Application .....	70	70	60 hours .....	4,200
Small Grants – Reports .....	150	150	30 hours .....	4,500
Standard Grants – Application .....	85	85	325 hours .....	27,625
Standard Grants - Reports .....	200	200	40 hours .....	8,000
Totals .....	505	505	.....	44,325

**III. Request for Comments**

We invite comments concerning this IC on:

- (1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- (2) the accuracy of our estimate of the burden for this collection of information;
- (3) ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include and/or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 29, 2008

**Hope Grey,**

*Information Collection Clearance Officer, Fish and Wildlife Service.*

[FR Doc. E8-14223 Filed 6-23-08; 8:45 am]

**BILLING CODE 4310-55-S**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

[FWS-R9-MB-2008-N0155] [91100-3740-GRNT-7C]

**Proposed Information Collection; OMB Control Number 1018-0113; Neotropical Migratory Bird Conservation Act (NMBCA) Grant Programs**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on December 31, 2008. 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.

**DATES:** You must submit comments on or before August 25, 2008.

**ADDRESSES:** Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); [hope\\_grey@fws.gov](mailto:hope_grey@fws.gov) (e-mail); or (703) 358-2269 (fax).

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Hope Grey by mail, fax, or e-mail (see ADDRESSES) or by telephone at (703) 358-2482.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The NMBCA establishes a matching grants program to fund projects that promote the conservation of neotropical migratory birds in the United States, Canada, Latin America, and the Caribbean. The purposes of NMBCA are to:

- (1) Perpetuate healthy populations of neotropical migratory birds;
- (2) Assist in the conservation of these birds by supporting conservation initiatives in the United States, Canada, Latin America, and the Caribbean; and
- (3) Provide financial resources and foster international cooperation for those initiatives.

Principal conservation actions supported by NMBCA are:

- (1) Protection and management of neotropical migratory bird populations.
- (2) Maintenance, management, protection, and restoration of neotropical migratory bird habitat.
- (3) Research and monitoring.
- (4) Law enforcement.
- (5) Community outreach and education.

We publish notices of funding availability on the Grants.gov website (<http://www.grants.gov>) as well as in the Catalog of Federal Domestic Assistance (<http://cfda.gov>). To compete for grant funds, partnerships submit applications that describe in substantial detail project locations, project resources, future benefits, and other characteristics that meet the standards established by the Fish and Wildlife Service and the requirements of NMBCA.

Materials that describe the program and assist applicants in formulating project proposals for consideration are available on our website at <http://www.fws.gov/birdhabitat>. Persons who do not have access to the Internet may obtain instructional materials by mail. We have not made any major changes in the scope and general nature of the instructions since the OMB first approved the information collection in 2002.

**II. Data**

*OMB Control Number:* 1018-0113.

*Title:* Neotropical Migratory Bird Conservation Act (NMBCA) Grant Programs.

*Service Form Number(s):* None.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* (1) an individual, corporation, partnership, trust, association, or other private entity; (2) an officer, employee, agent, department, or instrumentality of any State, municipality, or political subdivision of a State, or of any foreign government; (3) a State, municipality, or political subdivision of a State; (4) any other entity subject to the jurisdiction of the United States or of any foreign country; and (5) an international organization.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion. This grants program has one project

proposal submission per year. Annual reports are due 90 days after the anniversary date of the grant agreement.

Final reports are due 90 days after the end of the project period. The project period is up to 2 years.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
Grant Applications .....	160	160	70 hours .....	11,200
Reports .....	60	60	30 hours .....	1,800
Totals .....	220	220	.....	13,000

### III. Request for Comments

We invite comments concerning this IC on:

(1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include and/or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 11, 2008

**Hope Grey,**

*Information Collection Clearance Officer,  
Fish and Wildlife Service.*

[FR Doc. E8-14225 Filed 6-23-08; 8:45 am]

**BILLING CODE 4310-55-S**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R5-FHC-2008-N00165] [51320-1334-0000 L4]

### Proposed Information Collection; OMB Control Number 1018-0127; Horseshoe Crab Tagging Program

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on December 31, 2008. 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.

**DATES:** You must submit comments on or before August 25, 2008.

**ADDRESSES:** Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); *hope\_grey@fws.gov* (e-mail); or (703) 358-2269 (fax).

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Hope Grey by mail, fax, or e-mail (see ADDRESSES) or by telephone at (703) 358-2482.

#### **SUPPLEMENTARY INFORMATION: I. Abstract**

Horseshoe crabs are among the world's oldest creatures. People have used this evolutionary survivor for centuries. Horseshoe crabs play an important role in the ecology of the coastal ecosystem, and, over time, have provided opportunities for commercial, recreational, medical, scientific, and educational uses.

In 1998, the Atlantic States Marine Fisheries Commission (ASMFC), a management organization with representatives from each State on the Atlantic Coast, developed a horseshoe crab management plan. The ASMFC plan and its subsequent addenda established mandatory State-by-State harvest quotas, and created the 1,500 square mile Carl N. Shuster, Jr. Horseshoe Crab Sanctuary off the mouth of Delaware Bay. Fishermen use active management and innovative techniques

to conserve bait that have successfully reduced commercial horseshoe crab landings in recent years. Conch and eel fishermen have been using bait bags in their traps so they can use a portion of one crab per trap, compared to using a whole crab in each trap. The bait bags have reduced the demand for bait by 50 to 75 percent.

Although restrictive measures have been taken in recent years, populations are not showing immediate increases. Because horseshoe crabs do not breed until they reach 9 years or older, it may take some time before the population measurably increases. A Horseshoe Crab Cooperative Tagging Program was established to monitor this species. Cooperating Federal and State agencies, universities, and biomedical companies tag and release horseshoe crabs. Agencies that tag and release the crabs complete the Horseshoe Crab Tagging Release Form (FWS Form 3-2311) and provide the Service with:

- (1) Organization name.
- (2) Contact person name.
- (3) Tag number.
- (4) Sex of crab.
- (5) Prosomal width.
- (6) Capture site, latitude, longitude, waterbody, State, and date.

Through public participants who recover tagged crabs, we collect the following information using FWS Form 3-2310 (Horseshoe Crab Recapture Report):

- (1) Tag number.
- (2) Whether or not tag was removed.
- (3) Whether or not the tag was circular or square.
- (4) Condition of crab.
- (5) Date captured/found.
- (6) Crab fate.
- (7) Finder type.
- (8) Capture method.
- (9) Capture location.
- (10) Reporter information.
- (11) Comments.

If the public participant who reports the tagged crab requests information, we send data pertaining to the tagging program, and tag and release information on the horseshoe crab he/she found or captured. The information

that we collect is stored at the Maryland Fishery Resources Office, Fish and Wildlife Service, and used to evaluate migratory patterns, survival, and abundance of horseshoe crabs.

**II. Data**

OMB Control Number: 1018-0127.

*Title:* Horseshoe Crab Tagging Program.  
*Service Form Number(s):* FWS Forms 3-2310 and 3-2311.  
*Type of Request:* Extension of currently approved collection.  
*Affected Public:* Tagging agencies include Federal and State agencies,

universities, and biomedical companies. Members of the general public provide recapture information.  
*Respondent's Obligation:* Voluntary.  
*Frequency of Collection:* On occasion. When horseshoe crabs are tagged and when horseshoe crabs are found or captured.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
FWS Form 3-2310 .....	500	1,500	10 minutes .....	250
FWS Form 3-2311 .....	10	10	73 hours* .....	730
Totals .....	510	1,510	.....	980

\* Average time required per response is dependent on the number of tags applied by an agency in 1 year. Agencies tag between 25 and 9,000 horseshoe crabs annually, taking between 2 to 5 minutes per crab to tag. Each agency determines the number of tags it will apply.

**III. Request for Comments**

We invite comments concerning this IC on:

- (1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- (2) the accuracy of our estimate of the burden for this collection of information;
- (3) ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include and/or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 29, 2008

**Hope Grey,**

Information Collection Clearance Officer,  
 Fish and Wildlife Service.  
 [FR Doc. E8-14228 Filed 6-23-08; 8:45 am]  
 BILLING CODE 4310-55-S

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

[FWS-R6-R-2008-N0143; 60138-1265-6CCP-S3]

**Pathfinder National Wildlife Refuge, Alcova, WY; Correction**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability: Draft comprehensive conservation plan and environmental assessment; request for comment; correction.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, recently published a notice in error requesting comments on a draft Comprehensive Conservation Plan (CCP) and associated Environmental Assessment (EA) that are not yet available for comment. We will republish a notice and request for comment when these documents become available.

**FOR FURTHER INFORMATION CONTACT:** Toni Griffin, *Toni\_Griffin@fws.gov* or (303) 236-4378, or John Esperance, *John\_Esperance@fws.gov* or (303) 236-4369.

**SUPPLEMENTARY INFORMATION:** On June 16, 2008, we published a **Federal Register** notice (73 FR 34034) in error. The notice announced the availability for public review and comment of a draft CCP and EA, which would describe how we intend to manage Pathfinder National Wildlife Refuge for the next 15 years. Because the draft CCP and EA are not yet available for comment, we announce now that we will republish a notice and request for comment when the draft CCP and EA become available. We will accept comments at that time.

Dated: June 17, 2008.

**Sara Prigan,**

Federal Register Liaison.  
 [FR Doc. E8-14270 Filed 6-23-08; 8:45 am]  
 BILLING CODE 4310-55-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

[FWS-R9-IA-2008-N0146; 96300-1671-0000-P5]

**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 marine mammals.

**DATES:** Written data, comments or requests must be received by July 24, 2008.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358-2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358-2104.

**SUPPLEMENTARY INFORMATION:**

**Endangered Species**

The public is invited to comment on the following applications for a permit to conduct certain activities with

endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

**Applicant:** National Institute of Allergy and Infectious Diseases, Laboratory of Molecular Microbiology, Bethesda, MD, PRT-182606.

The applicant requests a permit to acquire from Coriell Institute, Camden, NJ, in interstate commerce skin fibroblast cell cultures from a male Bornean orangutan (*Pongo pygmaeus*) and a male Sumatran orangutan (*Pongo abelii*) for the purpose of scientific research. This notification covers the one-time acquisition only.

**Applicant:** Duke Lemur Center, Duke University, Durham, NC, PRT-182626.

The applicant requests a permit to import biological samples from the following species: Mouse lemur (*Microcebus rufus*), Gray mouse lemur (*Microcebus murinus*), Berthe's mouse lemur (*Microcebus berthae*), Verreaux's sifaka (*Propithecus verreauxi*), Diademed sifaka (*Propithecus diadema*), Red-fronted brown lemur (*Eulemur rufus*), White-fronted brown lemur (*Eulemur albifrons*), and Indri (*Indri indri*) for the purpose of enhancement of the species through scientific research. This notification covers activities conducted by the applicant for a five-year period.

#### Endangered Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with endangered marine mammals. The application was submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and 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 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:** Michael A. Wharton, Wharton Media, Aptos, CA, PRT-183345.

The applicant requests a permit to photograph Southern sea otters (*Enhydra lutris nereis*), both under and above water, for commercial and educational purposes. This notification covers activities to be conducted by the applicant over a one-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: May 30, 2008.

**Lisa J. Lierheimer**,  
Senior Permit Biologist, Branch of Permits,  
Division of Management Authority.

[FR Doc. E8-14200 Filed 6-23-08; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R9-IA-2008-N0151; 96300-1671-0000-P5]

#### 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 July 24, 2008.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358-2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358-2104.

#### SUPPLEMENTARY INFORMATION:

##### Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as

amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

**Applicant:** Wildlife Conservation Society, Bronx, NY, PRT-184427.

The applicant requests a permit to export one male and one female captive-born Snow leopard (*Uncia uncia*) to the ZooParc Beauval, France for the purpose of enhancement of the species through captive breeding and conservation education.

**Applicant:** Gerald R. Bloom, Richland, WA, PRT-184076.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

**Applicant:** John K. Miller, Boerne TX, PRT-180827.

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.

##### Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

**Applicant:** Bruce R. Schoeneweis, Alton, IL, PRT-182542.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Gulf of Boothia polar bear population in Canada prior to February 18, 1997, for personal, noncommercial use.



Dated: June 6, 2008.

**Lisa J. Lierheimer,**

Senior Permit Biologist, Branch of Permits,  
Division of Management Authority.

[FR Doc. E8-14201 Filed 6-23-08; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-110]

#### Meeting of the Central California Resource Advisory Council Off-Highway Vehicle Subcommittee

**ACTION:** Notice of Public Meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Central California Resource Advisory Council Off-Highway Vehicle (OHV) Subcommittee will meet as indicated below.

**DATES:** The meeting will be held Saturday, July 12, 2008, at Pea Soup Andersen's Restaurant, Santa Nella, California, from 10 a.m. to noon. Members of the public are welcome to attend the meeting. The subcommittee will conduct organizational business and discuss OHV issues for the subcommittee to address.

**FOR FURTHER INFORMATION CONTACT:** BLM Folsom Field Office Manager Bill Haigh or BLM Central California Public Affairs Officer David Christy, both at (916) 985-4474.

**SUPPLEMENTARY INFORMATION:** The twelve-member Central California RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues associated with public land management in the Central California. The RAC approved formation of an OHV Subcommittee in April 2007. The meeting is open to the public. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact the BLM as indicated above.

Dated: June 17, 2008.

**David Christy,**

Public Affairs Officer.

[FR Doc. E8-14235 Filed 6-23-08; 8:45 am]

BILLING CODE 4310-HC-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AK-963-1430-ET; F-025943]

#### Public Land Order No. 7710; Extension of Public Land Order No. 3708, as Modified by Public Land Order No. 6709; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order extends the withdrawal created by Public Land Order No. 3708, as modified by Public Land Order No. 6709, and partially revoked by Public Land Order No. 7682, for an additional 20-year period. The extension is necessary to continue protection of the National Oceanic and Atmospheric Administration's Gilmore Satellite Tracking Station, also known as the Fairbanks Command and Data Acquisition Station, located near Fairbanks, Alaska.

**DATES:** *Effective Date:* February 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Terrie D. Evarts, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7504, 907-271-5630.

**SUPPLEMENTARY INFORMATION:** Public Land Order No. 7682 partially revoked 63 acres and the acreage in this extension order reflects that revocation. The withdrawal extended by this order will expire on February 14, 2029, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be further extended.

#### Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

Public Land Order No. 3708 (30 FR 8753 (1965)), as modified by Public Land Order No. 6709 (54 FR 6919 (1989)), and partially revoked by Public Land Order No. 7682 (72 FR 71940 (2007)), which withdrew approximately 8,437 acres of public lands from all forms of appropriation under the public land laws, including the mining laws, but not from leasing under the mineral leasing laws, is hereby extended for an additional 20-year period until February 14, 2029.

Dated: June 4, 2008.

**C. Stephen Allred,**

Assistant Secretary—Land and Minerals Management.

[FR Doc. E8-14216 Filed 6-23-08; 8:45 am]

BILLING CODE 4310-JA-P

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Intent To Prepare an Environmental Assessment and Scoping

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of Intent to Prepare an Environmental Assessment and scoping for transferring jurisdiction of a portion of Fort Dupont Park to the District of Columbia for recreational development and uses and possible amendment of the 2004 Final Management Plan for Fort Circle Parks.

**SUMMARY:** In accordance with § 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et. seq.*), the National Park Service (NPS) will prepare an Environmental Assessment (EA) for transferring jurisdiction of a portion of NPS property within Fort Dupont Park, part of the Fort Circle Parks, to the District of Columbia (the District) for development of recreational facilities which may result in amending the NPS' 2004 Final Management Plan for Fort Circle Parks.

This also serves as an announcement of a public scoping comment period to run until July 24, 2008. Comments submitted to the Park or through Planning, Environment and Public Comment (PEPC) during the public scoping period and at public meetings for this EA will be considered as part of the planning process for the current proposed action. Comments submitted at the public meeting held May 12, 2008, will be considered as part of the planning process for the current proposed action and do not need to be resubmitted.

There is the possibility that the NPS might proceed to prepare an Environmental Impact Statement (EIS) in which case written comments submitted now on the scope of the alternatives and impacts will continue to be considered.

**DATES:** NPS is soliciting public input for the subject Proposed Action until July 24, 2008.

**ADDRESSES:** Comments may be submitted through the Planning, Environment and Public Comment (PEPC) Web site at <http://>

[parkplanning.nps.gov/NACE](http://parkplanning.nps.gov/NACE) or by mail to: Superintendent, National Capital Parks-East, RE: Fort Dupont Park Land Transfer Proposal, 1900 Anacostia Drive, SE., Washington, DC 20020.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**FOR FURTHER INFORMATION CONTACT:**

Gayle Hazelwood, Superintendent, National Capital Parks-East, RE: Fort Dupont Park Land Transfer Proposal, at 1900 Anacostia Drive, SE., Washington, DC 20020, by telephone at (202) 690-5127, or by e-mail at [gayle\\_hazelwood@nps.gov](mailto:gayle_hazelwood@nps.gov).

**SUPPLEMENTARY INFORMATION:** The 376-acre Fort Dupont Park is one of the Civil War Defenses of Washington and is one of the Fort Circle Parks managed by the NPS. In 2004, the NPS completed the Final Management Plan for Fort Circle Parks and an action to transfer these lands to the District will likely result in amendment of that plan. The transfer is to facilitate the development of new recreational facilities and programs on the subject property by the District, including a proposal to create a baseball academy and another to expand an existing indoor ice skating arena. The District's proposal would involve the help of private-sector partners.

The current Proposed Action is to transfer approximately 14 acres of NPS property situated on the north side of Fort Dupont Park along Ely Place in Southeast Washington, DC, to the District. This land is not in an area associated with the Civil War Defense of Washington, and does not contain earthworks or other historic or archeological resources. Once transferred, this property will no longer be part of the Park and no longer be managed or administered by the NPS. This transfer is part of an effort by the District to expand public facilities and recreational opportunities for area youth the NPS supports. The new recreational facilities and programs would be developed and operated by the District and its partners.

Information and comments gathered during scoping and public meetings will be used to identify the range of issues and potential impacts of this proposed action. It may also be used for other planning and decision-making.

Dated: April 23, 2008.

**Joseph M. Lawler,**

*Regional Director, National Capital Region.*

[FR Doc. E8-14213 Filed 6-23-08; 8:45 am]

**BILLING CODE 4312-JK-P**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Notice of Inventory Completion: Slater Museum of Natural History, University of Puget Sound, Tacoma, WA**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Slater Museum of Natural History, University of Puget Sound, Tacoma, WA. The human remains were removed from Yachats, Lincoln County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Slater Museum of Natural History, University of Puget Sound professional staff and a consultant in consultation with representatives of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; and Coquille Tribe of Oregon.

At an unknown date, human remains representing a minimum of one individual were removed from the vicinity of Yachats, Lincoln County, OR, by Dr. L. E. Hibbard. Dr. Hibbard gave the human remains to Stanley G. Jewett. Mr. Jewett donated the human remains to the Slater Museum in 1955. No known individual was identified. No associated funerary objects are present.

The individual is most likely of Native American ancestry as indicated by morphological features. Writing on the skull indicates that the human remains were removed from the vicinity of "Yahats," which is reasonably believed to be a misspelling of Yachats. The geographical location where the human remains were recovered is consistent with the historically

documented territory of the tribes now represented by the Confederated Tribes of the Siletz Reservation, Oregon. Members of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians of Oregon and Coquille Tribe of Oregon were moved to the Yachats area where they lived from 1859-1875. Absent additional information about the burial period, officials of the Slater Museum of Natural History reasonably believe that the human remains are most likely affiliated with the Alsea Tribe who had villages in the vicinity of Yachats, which had inhabited the area prior to the arrival of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians of Oregon and Coquille Tribe of Oregon, and continued to inhabit the area afterwards. The Alsea Tribe from the Yachats area are now members of the Confederated Tribes of the Siletz Reservation, Oregon. Furthermore, based on information provided during consultation with tribal representatives, there is a reasonable belief that the human remains share a common ancestry with members of tribes now represented by the Confederated Tribes of the Siletz Reservation, Oregon.

Officials of the Slater Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Slater Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Siletz Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Peter Wimberger, Slater Museum of Natural History, University of Puget Sound, 1500 N. Warner, Tacoma, WA 98416, telephone (253) 879-2784, before July 24, 2008. Repatriation of the human remains to the Confederated Tribes of the Siletz Reservation, Oregon may proceed after that date if no additional claimants come forward.

The Slater Museum of Natural History is responsible for notifying the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; and Coquille Tribe of Oregon that this notice has been published.

Dated: May 30, 2008.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8-14230 Filed 6-23-08; 8:45 am]

**BILLING CODE 4312-50-S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Inventory Completion: University of Hawai'i at Hilo, Department of Anthropology, Hilo, HI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession and control of the University of Hawai'i at Hilo, Department of Anthropology, Hilo, HI. The human remains were removed from Hawai'i Island, HI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of Hawai'i at Hilo professional staff in consultation with representatives of the Hawai'i Island Burial council, Hui Malama I Na Kupuna O Hawai'i Nei, and Office of Hawaiian Affairs.

In the late 1970s or early 1980s, human remains representing a minimum of one individual were removed from an unknown shoreline location near the old Kona Airport in the North Kona District, Hawai'i Island, HI. An unknown student delivered the human remains to faculty in the anthropology department at that time. No known individual was identified. No associated funerary objects are present.

The human remains are heavily weathered and come from an area where shoreline erosion of Native Hawaiian human remains is well documented. Property ownership in the area includes both State land and private land and it is unclear where the human remains originated. Based on the lack of definitive information of removal and location, the University of Hawai'i at Hilo has proceeded as the responsible entity.

Officials of the University of Hawai'i at Hilo have determined that, pursuant

to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of one individual of Native Hawaiian ancestry. Officials of the University of Hawai'i at Hilo also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native Hawaiian human remains and Hui Malama I Na Kupuna O Hawai'i Nei and Office of Hawaiian Affairs.

Representatives of any other Native Hawaiian Organization or Indian tribe that believes itself to be culturally affiliated with the human remains should contact Peter R. Mills, Department of Anthropology, Social Sciences Division, University of Hawai'i at Hilo, 200 West Kawili Street, Hilo, HI 96720-4091, telephone (808) 974-7465, before July 24, 2008. Repatriation of the human remains jointly to the Hui Malama I Na Kupuna O Hawai'i Nei and Office of Hawaiian Affairs may proceed after that date if no additional claimants come forward.

The University of Hawai'i at Hilo is responsible for notifying the Hawai'i Island Burial council, Hui Malama I Na Kupuna O Hawai'i Nei, and Office of Hawaiian Affairs that this notice has been published.

Dated: May 30, 2008

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E8-14227 Filed 6-23-08; 8:45 am]

**BILLING CODE 4312-50-S**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-567]

### In the Matter of Certain Foam Footwear; Notice of Commission Determination to Review-In-Part a Final Initial Determination Finding No Violation of Section 337

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the presiding administrative law judge's ("ALJ") final determination (ID) finding no violation of section 337 in the above-captioned investigation with respect to U.S. Patent No. 6,993,858 ("the '858 patent") and U.S. Patent No. D517,789 ("the '789 patent").

**FOR FURTHER INFORMATION CONTACT:** Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW.,

Washington, DC 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S.

International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on May 11, 2006, based on a complaint, as amended, filed by Crocs, Inc. ("Crocs") of Niwot, Colorado. 71 FR 27514 (2006). The amended complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain foam footwear, by reason of infringement of claims 1-2 of U.S. Patent No. 6,993,858; U.S. Patent No. D517,789; and the Crocs trade dress (the image and overall appearance of Crocs-brand footwear). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complaint requests that the Commission issue a permanent general exclusion order and permanent cease and desist orders. The complaint identifies 11 respondents that include: (1) Collective Licensing International, LLC ("Collective") of Englewood, Colorado; (2) Double Diamond Distribution Ltd. ("Double Diamond") of Saskatoon, Saskatchewan; (3) Effervescent Inc. ("Effervescent") of Fitchburg, Massachusetts; (4) Gen-X Sports, Inc. ("Gen-X Sports") of Toronto, Ontario; (5) Holey Shoes Holding Ltd. ("Holey Shoes") of Vancouver, British Columbia; (6) Australia Unlimited, Inc. of Seattle, Washington; (7) Cheng's Enterprises Inc. of Carlstadt, New Jersey; (8) D. Myers & Sons, Inc. of Baltimore, Maryland; (9) Inter-Pacific Trading Corp. of Los Angeles, California; (10) Pali Hawaii of Honolulu, Hawaii; and (11) Shaka Shoes of Kaliua-Kona, Hawaii. The Commission terminated the investigation as to the trade dress allegation on September 11, 2006. A

twelfth respondent, Old Dominion Footwear, Inc. of Madison Heights, Virginia, was added to the investigation on October 10, 2006. All but five respondents have been terminated from the investigation on the basis of a consent order, settlement agreement, or undisputed Commission determination of non-infringement. The five remaining respondents are: (1) Collective; (2) Double Diamond; (3) Effervescent; (4) Gen-X Sports; and (5) Holey Shoes.

On April 11, 2008, the ALJ issued his final ID finding no violation of section 337 by the remaining respondents. On April 24, 2008, the Commission issued a notice extending the deadline for determining whether to review the final ID by 15 days to June 11, 2008. On June 11, 2008, the Commission issued a notice extending the deadline for determining whether to review the final ID by 7 days to June 18, 2008.

Upon considering the parties' filings, the Commission has determined to review-in-part the final ID. Specifically, with respect to the '789 patent, the Commission has determined to review the ALJ's findings concerning non-infringement by the respondents' products and lack of satisfaction of the technical prong of the domestic industry requirement by Crocs' footwear. The Commission has also determined to review the ALJ's finding of invalidity with respect to the '858 patent. The Commission does not request any further written submissions at this time.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.42-45 of the Commission's Rules of Practice and Procedure, 19 CFR 210.42-45.

By order of the Commission.  
Issued: June 18, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8-14179 Filed 6-23-08; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on June 11, 2008, a proposed Consent Decree in *United States et al. v. Centex Homes, a Nevada General Partnership*, Civil Action No. 1:08CV605 was lodged with the United States District Court for the Eastern District of Virginia.

In this action the United States sought civil penalties and injunctive relief for alleged violations of the Clean Water

Act ("CWA"), 33 U.S.C. 1311 *et seq.*, as well as violations of state and federal National Pollutant Discharge Elimination System ("NPDES") permits governing the discharge of storm water from Centex's construction sites. The proposed consent decree would require Centex to pay a civil penalty of \$1,485,000 and implement a company-wide compliance program that goes beyond current regulatory requirements.

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](mailto:pubcomment-ees.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. Centex Homes*, D.J. Ref. No. 90-5-1-1-08059.

The consent decree and associated appendices may be examined at the Office of the United States Attorney, Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia 22314. During the public comment period, the consent decree also may be examined on the following Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the consent decree and the associated appendices 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](mailto: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 \$ 39.25 (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. To obtain a copy of the proposed consent decree exclusive of exhibits, please enclose a check in the amount of \$19.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. All requests for documents should refer to *United States v. Centex Homes*, Civil Action Number 1:08CV605, and D.J. Ref. No. 90-5-1-1-08059.

**Karen Dworkin,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E8-14095 Filed 6-23-08; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on June 11, 2008, a proposed Consent Decree in *United States et al. v. KB Home*, Civil Action No. 1:08CV603 was lodged with the United States District Court for the Eastern District of Virginia.

In this action the United States sought civil penalties and injunctive relief for alleged violations of the Clean Water Act ("CWA"), 33 U.S.C. 1311 *et seq.*, as well as violations of state and federal National Pollutant Discharge Elimination System ("NPDES") permits governing the discharge of storm water from KB Home's construction sites. The proposed consent decree would require KB Home to pay a civil penalty of \$1,185,000 and implement a company-wide compliance program that goes beyond current regulatory requirements.

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](mailto:pubcomment-ees.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. KB Home*, D.J. Ref. No. 90-5-1-1-08057.

The consent decree and associated appendices may be examined at the Office of the United States Attorney, Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia 22314. During the public comment period, the consent decree also may be examined on the following Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the consent decree and the associated appendices 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](mailto: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 \$34.75 (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. To obtain a copy of the proposed consent decree exclusive of exhibits, please enclose a check in the

amount of \$17.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. All requests for documents should refer to *United States v. KB Home*, Civil Action Number 1:08CV603, and D.J. Ref. No. 90-5-1-1-08057.

**Karen Dworkin,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E8-14099 Filed 6-23-08; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on June 11, 2008, a proposed Consent Decree in *United States et al. v. M.D.C. Holdings, Inc., et al.*, Civil Action No. 1:08CV604 was lodged with the United States District Court for the Eastern District of Virginia.

In this action the United States sought civil penalties and injunctive relief for alleged violations of the Clean Water Act ("CWA"), 33 U.S.C. 1311 *et seq.*, as well as violations of state and federal National Pollutant Discharge Elimination System ("NPDES") permits governing the discharge of storm water from construction sites owned and operated by M.D.C. Holdings and certain affiliated entities. The proposed consent decree would require M.D.C. Holdings and certain affiliated entities to pay a civil penalty of \$795,000 and implement a company-wide compliance program that goes beyond current regulatory requirements.

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](mailto:pubcomment-ees.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. M.D.C. Holdings, Inc.*, D.J. Ref. No. 90-5-1-1-08285.

The consent decree and associated appendices may be examined at the Office of the United States Attorney, Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia 22314. During the public comment period, the consent decree also may be examined on the following Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the consent decree and the associated

appendices 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](mailto: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 \$39.75 (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. To obtain a copy of the proposed consent decree exclusive of exhibits, please enclose a check in the amount of \$18.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. All requests for documents should refer to *United States v. M.D.C. Holdings, Inc.*, Civil Action Number 1:08CV604, and D.J. Ref. No. 90-5-1-1-08285.

**Karen Dworkin,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E8-14098 Filed 6-23-08; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on June 11, 2008, a proposed Consent Decree in *United States et al. v. Pulte Homes, Inc.*, Civil Action No. 1:08CV602 was lodged with the United States District Court for the Eastern District of Virginia.

In this action the United States sought civil penalties and injunctive relief for alleged violations of the Clean Water Act ("CWA"), 33 U.S.C. 1311 *et seq.*, as well as violations of state and federal National Pollutant Discharge Elimination System ("NPDES") permits governing the discharge of storm water from Pulte's construction sites. The proposed consent decree would require Pulte Homes to pay a civil penalty of \$877,000, perform a supplemental environmental project at a minimum cost of \$608,000, and implement a company-wide compliance program that goes beyond current regulatory requirements.

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](mailto:pubcomment-ees.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. Pulte Homes*, D.J. Ref. No. 90-5-1-1-08332.

The consent decree and associated appendices may be examined at the Office of the United States Attorney, Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia 22314. During the public comment period, the consent decree also may be examined on the following Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the consent decree and the associated appendices 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](mailto: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 \$35.50 (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. To obtain a copy of the proposed consent decree exclusive of exhibits, please enclose a check in the amount of \$22.00 (25 cents per page reproduction cost) payable to the U.S. Treasury. All requests for documents should refer to *United States v. Pulte Homes*, civil action number 1:08CV602, and D.J. Ref. No. 90-5-1-1-08332.

**Karen Dworkin,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E8-14097 Filed 6-23-08; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

[OMB Number 1121-0064]

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** 60-day notice of information collection under review: Extension of a currently approved collection: Annual Parole Survey, Annual Probation Survey, and Annual Probation Survey (Short Form).

The Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Statistics (BJS) will be

submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 25, 2008. This process is in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lauren E. Glaze, Statistician (202) 305-9628, Bureau of Justice Statistics, 810 Seventh St., NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the 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, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

#### **Overview of This Information Collection:**

(1) *Type of information collection:* Extension of currently approved collection.

(2) *The title of the Form/Collection:* Annual Parole Survey, Annual Probation Survey, and Annual Probation Survey (Short Form).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Forms: CJ-7 Annual Parole Survey; CJ-8 Annual Probation Survey; and CJ-8A Annual Probation Survey (Short Form). Corrections Statistics Program, Bureau of Justice Statistics, Office of Justice

Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* *Primary:* State Departments of Corrections or State probation and Parole authority. *Others:* The Federal Bureau of Prisons, city and county courts and probation offices for which a central reporting authority does not exist. For the CJ-7 form, 54 central reporters (two State jurisdictions in California and one each from the remaining States, the District of Columbia, the Federal Bureau of Prisons, and one local authority) responsible for keeping records on parolees will be asked to provide information for the following categories:

(a) As of January 1, 2008 and December 31, 2008, the number of adult parolees under their jurisdiction;

(b) The number of adults entering parole during 2008 through discretionary release from prison, mandatory release from prison, a term of supervised release, or reinstatement of parole;

(c) The number of adults released from parole during 2008 through completion, incarceration, treatment, absconder status, transfer to another parole jurisdiction, or death;

(d) Whether the number of adult parolees reported as of December 31, 2008 represents individuals or cases;

(e) Whether adult parolees supervised out of State have been included in the total number of parolees on December 31, 2008, and the number of adult parolees supervised out of State;

(f) As of December 31, 2008, the number of adult parolees under their jurisdiction with a sentence of more than one year, or a year or less;

(g) As of December 31, 2008, the number of male and female adult parolees under their jurisdiction;

(h) As of December 31, 2008, the number of white (not of Hispanic origin), black or African American (not of Hispanic origin), Hispanic or Latino, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander, two or more races, or the number of adult parolees for which no information was available;

(i) As of December 31, 2008, the number of adult parolees who had as their most serious offense a violent, property, drug, public-order, or other offense;

(j) As of December 31, 2008, the number of adult parolees under their jurisdiction who were active, only have financial conditions remaining, inactive, absconders, or supervised out of state;

(k) As of December 31, 2008, the number of adult parolees under their

jurisdiction who were supervised following a discretionary release, a mandatory release, a term of supervised release, a special conditional release, or other type of release from prison;

(l) Whether the parole authority supervised any adult parolees who were also on probation supervision, held in local jails, prisons, community-based correctional facilities, or an ICE holding facility, and the number of adult parolees held in each on December 31, 2008;

(m) Whether the parole authority uses GPS monitoring systems to track the location of adult parolees, and the number of adult parolees tracked with GPS on December 31, 2008;

(n) Whether the parole authority collects data on the number of adult parolees in a treatment program, and the number of adult parolees in treatment programs by type of program;

(o) Whether the parole authority collects data on the number of serious assaults or deaths of parole officers while in the line of duty, and the number of serious assaults or deaths of officers during 2008;

For the CJ-8 form, 344 reporters (one from each State, the District of Columbia, and the Federal Bureau of Prisons; and 292 from local authorities) responsible for keeping records on probationers will be asked to provide information for the following categories:

(a) As of January 1, 2008 and December 31, 2008, the number of adult probationers under their jurisdiction;

(b) The number of adults entering probation during 2008 with and without a sentence to incarceration;

(c) The number of adults discharged from probation during 2008 through completion, incarceration, treatment, absconder status, a detainer or warrant, transfer to another parole jurisdiction, and death;

(d) Whether the number of adult probationers reported as of December 31, 2008 represents individuals or cases;

(e) As of December 31, 2008, the number of male and female adult probationers under their jurisdiction;

(f) As of December 31, 2008, the number of white (not of Hispanic origin), black or African American (not of Hispanic origin), Hispanic or Latino, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander, two or more races, or the number of adult probationers for which no information was available;

(g) As of December 31, 2008, the number of adult probationers under their jurisdiction who were sentenced for a felony, misdemeanor, or other offense type;

(h) As of December 31, 2008, the number of adult probationers who had as their most serious offense domestic violence, other violent offense, property offense, drug law violation, driving while intoxicated or under the influence of alcohol or drugs, or other traffic offense;

(i) Whether adult probationers supervised out of State have been included in the total number of probationers on December 31, 2008, and the number of adult probationers supervised out of State;

(j) Whether the probation authority collects data on the number of adult probationers who had previously served a sentence to prison for the same offense for which they are on probation;

(k) Whether the probation authority supervised adult probationers who were also on parole supervision, any probationers held in local jails, prisons, community-based correctional facilities, or an ICE holding facility, and the number of adult probationers held in each on December 31, 2005;

(l) As of December 31, 2008, the number of adult probationers under their jurisdiction who had entered probation with a direct sentence to probation, a split sentence to probation, a suspended sentence to incarceration, or a suspended imposition of sentence;

(m) As of December 31, 2008, the number of adult probationers under their jurisdiction who were active, in a residential or other treatment program, only had financial conditions remaining, inactive, absconders, those on warrant status, or supervised out of state;

(n) Whether the probation authority collects data on the number of adult probationers required to pay fines/restitution, and the number of adult probationers required to pay fines/restitution by type;

(o) Whether the probation authority collects data on the number of adult probationers in a treatment program, and the number of adult probationers in treatment programs by type of program;

(p) Whether the probation authority collects data on the number of serious assaults or deaths of probation officers while in the line of duty, and the number of serious assaults or deaths of officers during 2008;

For the CJ-8A form, 120 reporters (from local authorities) responsible for keeping records on probationers will be asked to provide information for the following categories:

(a) As of January 1, 2008 and December 31, 2008, the number of adult probationers under their jurisdiction;

(b) The number of adults entering probation and discharged from probation during 2008;

(c) Whether the number of adult probationers reported as of December 31, 2008 represents individuals or cases;

(d) As of December 31, 2008, the number of male and female adult probationers under their jurisdiction;

(e) As of December 31, 2008, the number of adult probationers under their jurisdiction who were sentenced for a felony, misdemeanor, or other offense type. The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 518 respondents each taking an average of 1.27 hours to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 657 annual burden hours.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 18, 2008.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E8-14272 Filed 6-23-08; 8:45 am]

**BILLING CODE 4410-18-P**

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## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Meeting

June 17, 2008.

**TIME AND DATE:** 10 a.m., Wednesday, July 9, 2008.

**PLACE:** The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hear oral argument in the matter Secretary of Labor v. *Spartan Mining Company*, Docket Nos. WEVA 2004-117-RM, *et al.* (Issues include whether the Administrative Law Judge properly found violations and assessed penalties for the following standards: 30 CFR 75.606 (requiring protecting cables); 30 CFR 75.511 (requiring locking and tagging out before electrical work); 30 CFR 75.1725(a) (requiring

unsafe equipment to be removed from service); and 30 CFR 75.313(a)(3) (requiring withdrawal from a working section in mine fan outage)).

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFO:** Jean Ellen (202) 434-9950/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

**Sandra G. Farrow,**

*Acting Chief Docket Clerk, Federal Mine Safety & Health Review Commission.*

[FR Doc. E8-14207 Filed 6-23-08; 8:45 am]

**BILLING CODE 6735-01-P**

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## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52-014-COL, 52-015-COL; ASLBP No. 08-864-02-COL-BD01]

### Tennessee Valley Authority; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

#### Tennessee Valley Authority

*(Bellefonte Nuclear Power Plant Units 3 and 4)*

This proceeding concerns a Petition to Intervene and Request for Hearing submitted by the Bellefonte Efficiency and Sustainability Team, the Blue Ridge Environmental Defense League, and the Southern Alliance for Clean Energy, which was submitted in response to a February 8, 2008 Notice of Hearing and Opportunity To Petition for Leave To Intervene on a Combined License for Bellefonte Units 3 and 4 (73 FR 7,611), and an April 11, 2008 Notice of Extension of Time for Petition for Leave To Intervene on a Combined License Application for Bellefonte Units 3 and 4 (73 FR 19,904). The Petition to Intervene and Request for Hearing challenges the application filed by Tennessee Valley Authority pursuant to Subpart C of 10 CFR Part 52 for a combined license for Bellefonte Units 3

and 4, which would be located at the Bellefonte Nuclear Power Plant in Jackson County, Alabama.

The Board is comprised of the following administrative judges:

G. Paul Bollwerk, III, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001;

Dr. Anthony J. Baratta, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001;

Dr. William W. Sager, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 18th day of June 2008.

**E. Roy Hawkens,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. E8-14204 Filed 6-23-08; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

### Sunshine Federal Register Notice

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission.

**DATE:** Weeks of June 23, 30, July 7, 14, 21, 28, 2008.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

#### Week of June 23, 2008

*Wednesday, June 25, 2008*

1 p.m. Periodic Briefing on New Reactor Issues (Public Meeting) (Contact: Donna Williams, 301 415-1322).

This meeting will be Webcast live at the Web address <http://www.nrc.gov>.

#### Week of June 30, 2008—Tentative

*Tuesday, July 1, 2008*

9 a.m. Hearing: Diablo Canyon, 10 CFR Part 2, Subpart K Proceeding, Oral Arguments (Public Meeting) (Contact: John Cordes, 301 415-1600).

This meeting will be Webcast live at the Web address <http://www.nrc.gov>.

#### Week of July 7, 2008—Tentative

There are no meetings scheduled for the week of July 7, 2008.

#### Week of July 14, 2008—Tentative

*Thursday, July 17, 2008*

1 p.m. Briefing on Fire Protection Issues (Public Meeting) (Contact: Alex Klein, 301 415-2822).

This meeting will be Webcast live at the Web address <http://www.nrc.gov>.

#### Week of July 21, 2008—Tentative

*Wednesday, July 23, 2008*

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1 & 3).

*Thursday, July 24, 2008*

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1 & 3).

#### Week of July 28, 2008—Tentative

There are no meetings scheduled for the week of July 28, 2008.

\* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415-1292. Contact person for more information: Michelle Schroll, (301) 415-1662.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/about-nrc/policy-making/schedule.html>.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301-492-2279, TDD: 301-415-2100, or by e-mail at [REB3@nrc.gov](mailto:REB3@nrc.gov). Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to [dkw@nrc.gov](mailto:dkw@nrc.gov).

Dated: June 19, 2008.

**R. Michelle Schroll,**

*Office of the Secretary.*

[FR Doc. 08-1384 Filed 6-20-08; 10:30 am]

**BILLING CODE 7590-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-8932; 34-57990; File No. 265-24]

### Advisory Committee on Improvements to Financial Reporting

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of Meeting of SEC Advisory Committee on Improvements to Financial Reporting.

**SUMMARY:** The Securities and Exchange Commission Advisory Committee on Improvements to Financial Reporting is providing notice that it will hold a public meeting on Friday, July 11, 2008, in the Multipurpose Room, Room L-006, at the Commission's main offices, 100 F Street, NE., Washington, DC, beginning at 9:30 a.m. The meeting will be open to the public. The meeting will be Webcast on the Commission's Web site at <http://www.sec.gov>. The public is invited to submit written statements for the meeting.

The agenda for the meeting includes discussion and deliberation of draft recommendations for the Committee's final report to the Commission. The Committee also may discuss written statements received and other matters of concern.

**DATES:** Written statements should be received on or before July 3, 2008.

**ADDRESSES:** Written statements may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet submission form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 265-24 on the subject line.

#### Paper Comments

- Send paper statements in triplicate to Florence Harmon, Acting Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. 265-24. This file number should be included on the subject line if e-mail is used. To help us process and review your statements more efficiently, please use only one method. The Commission staff will post all statements on the Advisory Committee's Web site (<http://www.sec.gov/about/offices/oca/acifr.shtml>). Statements also will be available for public inspection and copying in the Commission's Public



Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:**

James L. Kroeker, Deputy Chief Accountant, or Shelly C. Luisi, Senior Associate Chief Accountant, at (202) 551-5300, Office of the Chief Accountant, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-6561.

**SUPPLEMENTARY INFORMATION:** In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, § 10(a), James L. Kroeker, Designated Federal Officer of the Committee, has approved publication of this notice.

Dated: June 19, 2008.

**Florence E. Harmon,**

*Acting Committee Management Officer.*

[FR Doc. E8-14217 Filed 6-23-08; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57981; File No. SR-NASDAQ-2008-037]

### Self-Regulatory Organizations; The NASDAQ Stock Market, LLC; Order Approving Proposed Rule Change To Modify Certain of Nasdaq's Initial and Continued Listing Requirements To Replace the Round Lot Requirement in the Minimum Holder Requirements to Either Total or Public Shareholders

June 17, 2008.

#### I. Introduction

On April 25, 2008, The NASDAQ Stock Market, LLC ("Exchange" or "Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to change the shareholder minimum holder requirements for Nasdaq's continued listing standards. The proposed rule change was published in the **Federal Register** on May 13, 2008.<sup>3</sup> The Commission received no comments on

the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

Nasdaq initial and continued listing standards require a Nasdaq-listed company to meet and maintain, among other things, certain minimum number of round lot holders to demonstrate the security's liquidity. Nasdaq proposes to generally eliminate the requirement of round lot holders and replace it with different requirements, and to adopt new definitions with respect to these proposed changes.

##### *A. Nasdaq Global Select Market and Nasdaq Global Market Continued Listing Standards—(1) First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts and (2) Preferred Stock and Secondary Classes of Common Stock*

The current minimum requirement for continued listing under the Nasdaq Global Select Market and Nasdaq Global Market is 400 round lot shareholders for common stock and equivalent<sup>4</sup> and 100 round lot shareholders for preferred stock and secondary classes of common stock.<sup>5</sup> Nasdaq proposes to change these requirements to 400 "total" shareholders for common stock and equivalent<sup>6</sup> and 100 "public" shareholders for preferred stock and secondary classes of common stock.<sup>7</sup>

##### *B. Nasdaq Global Select Market Initial Listing Standards*

The current minimum requirement for initial listing under the Nasdaq Global Select Market is (1) a minimum of 550 beneficial shareholders and average monthly trading volume over the previous 12 months of at least 1,100,000 shares per month; (2) a minimum of 2,200 beneficial shareholders; or (3) a minimum of 450 beneficial round lot shareholders.<sup>8</sup> Nasdaq proposes to change these holder requirements to: (1) A minimum of 550 "total" shareholders and average monthly trading volume over the previous 12 months of at least 1,100,000 shares per month; (2) a minimum of 2,200 "total" shareholders; or (3) a minimum of 450 "round lot" shareholders.<sup>9</sup>

<sup>4</sup> See Nasdaq Rule 4450(a).

<sup>5</sup> See Nasdaq Rule 4450(h).

<sup>6</sup> See proposed Nasdaq Rule 4450(a).

<sup>7</sup> See proposed Nasdaq Rule 4450(h).

<sup>8</sup> See Nasdaq Rule 4426(b)(1).

<sup>9</sup> See proposed Nasdaq Rule 4426(b)(1).

##### *C. Nasdaq Capital Market Continued Listing Standards—(1) Domestic and Canadian Securities and (2) Non-Canadian Foreign Securities and American Depositary Receipts*

The current minimum requirement for continued listing for domestic and Canadian securities under the Nasdaq Capital Market is 300 round lot holders for common stock and 100 round lot holders for preferred stock and secondary classes of common stock.<sup>10</sup> Nasdaq proposes to change these holder requirements to 300 public holders for common stock and 100 public holders for preferred stock and secondary classes of common stock.<sup>11</sup>

The current minimum requirement for continued listing for non-Canadian foreign securities and American Depositary Receipts under the Nasdaq Capital Market is 300 round lot holders for common stock and 100 round lot holders for preferred stock and secondary classes of common stock.<sup>12</sup> Nasdaq proposes to change these holder requirements to 300 public holders for common stock and 100 public holders for preferred stock and secondary classes of common stock.<sup>13</sup>

##### *D. Changes to Definitions*

Nasdaq also proposes to add a new definition of "public holders" to include beneficial holders and holders of record and exclude any holder who is, either directly or indirectly, an executive officer, director, or the beneficial holder of more than 10% of the total shares outstanding.<sup>14</sup> In addition, Nasdaq proposes to add a new definition of "total holders" to include beneficial holders and holders of record.<sup>15</sup> Finally, Nasdaq proposes to amend the definition of "round lot holder" to clarify that beneficial holders would be considered in addition to holders of record.<sup>16</sup>

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the

<sup>10</sup> See Nasdaq Rule 4310(c)(6).

<sup>11</sup> See proposed Nasdaq Rule 4310(c)(6).

<sup>12</sup> See Nasdaq Rule 4320(e)(4).

<sup>13</sup> See proposed Nasdaq Rule 4320(e)(4).

<sup>14</sup> See proposed Nasdaq Rule 4200(a)(32).

<sup>15</sup> See proposed Nasdaq Rule 4200(a)(38).

<sup>16</sup> See proposed Nasdaq Rule 4200(a)(33).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 57795 (May 7, 2008), 73 FR 27590.

Act,<sup>17</sup> which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and to not permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>18</sup>

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards, among other things, serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have or, in the case of an IPO, will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

*A. Nasdaq Global Select Market and Nasdaq Global Market Continued Listing Standards—(1) First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts and (2) Preferred Stock and Secondary Classes of Common Stock*

Nasdaq proposes to change the continued listing standards of the Nasdaq Global Select Market and Nasdaq Global Market shareholder requirements from 400 round lot shareholders to 400 total shareholders, for common stock and equivalent, and from 100 round lot shareholders to 100 public shareholders, for preferred stock and secondary classes of common stock. The Commission believes that the proposal would continue to ensure that securities listed on Nasdaq Global Select and Global Markets would have sufficient liquidity to promote fair and

orderly markets. The Commission notes that other listing markets utilize the concept of total shareholders and public shareholders. For example, the New York Stock Exchange (“NYSE”) requires, among other things, 400 total stockholders (record holders and beneficial holders) for continued listing of capital or common stock on NYSE.<sup>19</sup> Further, the American Stock Exchange (“Amex”) requires, among other things, 300 public shareholders for continued listing of common stock on its market.<sup>20</sup> Accordingly, the Commission finds the proposal is consistent with the requirements of the Act.

*B. Nasdaq Global Select Market Initial Listing Standards*

Nasdaq proposes to change the initial listing standards of the Nasdaq Global Select Market shareholder requirements from: (1) Minimum of 550 beneficial shareholders and average monthly trading volume over the previous 12 months of at least 1,100,000 shares per month; (2) minimum of 2,200 beneficial shareholders; or (3) minimum of 450 beneficial round lot shareholders, to: (1) Minimum of 550 “total” shareholders and average monthly trading volume over the previous 12 months of at least 1,100,000 shares per month; (2) minimum of 2,200 “total” shareholders; or (3) minimum of 450 “round lot” shareholders.

The Commission believes that the proposal would ensure that securities to be listed on Nasdaq Global Select Market would have sufficient liquidity to promote fair and orderly markets. The Commission notes that other listing markets utilize the concept of total shareholders and “round lot” shareholders and the changes are similar to certain NYSE requirements.<sup>21</sup> Based on the foregoing, the Commission finds the proposal is consistent with the requirements of the Act.

*C. Nasdaq Capital Market Continued Listing Standards—(1) Domestic and Canadian Securities and (2) Non-Canadian Foreign Securities and American Depositary Receipts*

Nasdaq proposes to change the minimum requirement for continued listing for domestic and Canadian

securities under the Nasdaq Capital Market from 300 round lot holders for common stock and 100 round lot holders for preferred stock and secondary classes of common stock, to 300 “public” holders for common stock and 100 “public” holders for preferred stock and secondary classes of common stock. In addition, Nasdaq proposes to change the minimum requirement for continued listing for non-Canadian foreign securities and American Depositary Receipts under the Nasdaq Capital Market from 300 round lot holders for common stock and 100 round lot holders for preferred stock and secondary classes of common stock to 300 “public” holders for common stock and 100 “public” holders for preferred stock and secondary classes of common stock.

The Commission finds the proposed change to the Nasdaq Capital Market common stock shareholder requirement is substantially similar to the Amex continued listing standards. Amex continued listing standards require, among other things, 300 public shareholders for continued listing.<sup>22</sup>

The Commission also finds that the proposed change to the Nasdaq Capital Market preferred stock shareholder requirement is substantially similar to the Nasdaq Global Market preferred stock continued listing standards. Nasdaq Global Market continued listing standards require, among other things, a minimum of 100 round lot shareholders for preferred stock continued listing.<sup>23</sup> While the standards differ, the Commission believes that the proposed 100 public shareholders requirement for preferred stock would continue to ensure, at a minimum, an adequate level of liquidity as the round lot shareholder standard.

*D. Changes to Definitions*

In connection with the proposed changes above, Nasdaq also proposes to add a new definition of “public holders” to include beneficial holders and holders of record and exclude any holder who is, either directly or indirectly, an executive officer, director, or the beneficial holder of more than 10% of the total shares outstanding. In addition, Nasdaq proposes to add a new definition of “total holders” to include beneficial holders and holders of record. Finally, Nasdaq proposes to amend the definition of “round lot holder” to clarify that beneficial holders would be considered in addition to holders of record. As noted earlier, these

<sup>19</sup> See NYSE Listed Company Manual Section 802.01A.

<sup>20</sup> See Amex Company Guide Section 100(b)(i).

<sup>21</sup> See NYSE Listed Company Manual Section 102.01A. NYSE initial listing standards require, among other things: (1) 500 total stockholders and average monthly trading volume of 1,000,000 shares for most recent 12 months; or (2) 2,200 total stockholders and average monthly trading volume of 100,000 shares for most recent 6 months; or (3) 400 round lot holders and 1,100,000 shares of publicly held shares, for initial listing on NYSE.

<sup>22</sup> See Amex Company Guide Section 1003(b)(i)(B).

<sup>23</sup> See Nasdaq Rules 4420(k) and 4450(h).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

definitions are used by other exchanges and should help to ensure that Nasdaq's holder requirements will continue to provide an adequate level of liquidity to develop and maintain fair and orderly markets. Accordingly, the Commission finds that the proposed changes are consistent with the requirements of the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (SR-NASDAQ-2008-037) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-14178 Filed 6-23-08; 8:45 am]

BILLING CODE 8010-01-P

### TENNESSEE VALLEY AUTHORITY

#### Final Environmental Impact Statement—Rutherford-Williamson-Davidson Power Supply Improvement Project

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Issuance of Record of Decision.

**SUMMARY:** This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. TVA has decided to implement the preferred alternative identified in its Final Environmental Impact Statement (EIS), Rutherford-Williamson-Davidson Power Supply Improvement Project.

In implementing Alternative 2, TVA has decided to construct and operate the new 500-kV Rutherford Substation, the 27-mile 500-kV transmission line between TVAs 500-kV Maury Substation and the new Rutherford Substation, the new 9-mile 161-kV transmission line between the new Rutherford Substation and Middle Tennessee Electric Membership Corporations (MTEMC) Almaville Substation, and the new 15-mile 161-kV transmission line between the new Rutherford Substation and MTEMCs Christiana Substation.

**FOR FURTHER INFORMATION CONTACT:** Anita E. Masters, Senior NEPA Specialist, Environmental Stewardship and Policy, Tennessee Valley Authority, 1101 Market Street, LP 5U, Chattanooga,

Tennessee 37402; telephone (423) 751-8697 or e-mail [aemasters@tva.gov](mailto:aemasters@tva.gov).

**SUPPLEMENTARY INFORMATION:** TVA owns and operates a system of transmission lines that move electricity throughout the TVA service area, which comprises most of Tennessee and portions of six adjacent states, and to adjacent utilities. The electrical load growth in Rutherford, Williamson, and Maury Counties, Tennessee, will exceed the capacity of the three 500-kV substations and several of the 161-kV transmission lines serving the area by 2010. Unless action is taken to address this problem, TVAs ability to continue to provide reliable electric service will be degraded and disrupted more frequently and for longer periods. Therefore, TVA needs to increase transmission capacity in this area.

TVA published a Notice of Intent to prepare this EIS in the **Federal Register** on July 1, 2005. A public scoping meeting was held in July 2005 and attended by about 25 people. Written scoping comments were received from two federal agencies, five state agencies, and several individuals. The Notice of Availability of the Draft EIS was published in the **Federal Register** on October 5, 2007. TVA held a public meeting on the Draft EIS in October 2007 and accepted comments through mid-November. During the development of the EIS, TVA also accepted comments received during an open house held in April 2006 to review potential substation sites and transmission line routes. Comments on the Draft EIS were received from about 22 members of the public and agencies. Appendix B of the Final EIS contains comments TVA received on the Draft EIS and responses to those comments. The Notice of Availability for the Final EIS was published in the **Federal Register** on April 18, 2008.

#### Alternatives Considered

TVA uses a detailed, comprehensive siting process when it plans its transmission line projects. This is an iterative process that takes into account important environmental and cultural resource features that become constraints on locating proposed lines. Concerns of potentially affected landowners are also actively addressed during this process to reduce or avoid landowner impacts. Broad study corridors are initially defined and potential line routes are subsequently located within the study corridors. Because transmission line right-of-ways (ROWs) are much narrower than the study corridors, important features that are associated with specific corridors

can often be avoided when final line routes are selected. Potential environmental impacts are considered and addressed throughout this siting process with the objective of formulating alternative line routes, including a preferred route, that meet the purpose and need for the proposed action while avoiding or reducing potential impacts. The identified preferred route is then subjected to additional study and analyses. TVA uses a similar process in identifying substation sites.

TVA initially identified four solutions (possible alternatives) to meet the project need. *These consisted of:* (1) Construct and operate a new 500-kV substation in southwest Rutherford County, and construct and operate 25–30 miles of 500-kV transmission line on vacant, TVA-owned ROW, and about 24 miles of new 161-kV transmission lines in Rutherford, Maury, and Williamson Counties; (2) construct and operate a new 500-kV substation in northeast Williamson County near Brentwood and upgrade about 126 miles of existing 161-kV transmission lines in Davidson, Rutherford, Williamson, Sumner, Coffee, Franklin, and Bedford Counties; (3) expand TVAs Pinhook 500-kV Substation in southeast Davidson County and upgrade about 134 miles of existing 161-kV transmission lines in Davidson, Rutherford, Williamson, Sumner, Wilson, Franklin, and Bedford Counties; and (4) rely on load management and conservation by achieving a reduction in current peak loads by at least 800 megawatts.

Further evaluation of these four potential solutions concluded that only the first would be able to meet the project need. The other two construction solutions had higher overall costs, engineering problems, and problems meeting the 2010 in-service date because of the limited times when the existing transmission lines could be taken out of service for upgrading. Although TVA has recently committed to achieving a system-wide reduction in peak demand growth of 1,400 MW by 2012, the amount of load reduction achievable in the project area by 2010 is not sufficient for the load management/conservation solution to meet the purpose and need.

TVA subsequently addressed two alternatives in further detail in the EIS.

Under Alternative 1, the No Action Alternative, TVA would not address the forecast high-voltage transmission capacity problem by implementing any of the potential solutions identified above. This would make existing electrical supplies unstable and increase likelihood of both planned and

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

unplanned power outages (brownouts/blackouts) in the Middle Tennessee area as the demand continued to grow.

Under Alternative 2, TVA would construct and operate a new 500-kV substation in southwest Rutherford County and associated 500-kV and 161-kV transmission lines. The preferred locations for these facilities were determined through a rigorous siting process, which included evaluations of natural and cultural features, land use, engineering attributes, and cost. The substation would be located on Coleman Hill Road, about 4 miles east of U.S. Alternate Highway 31/41. A 27-mile 500-kV transmission line would be built on vacant, TVA-owned ROW between TVAs existing Maury 500-kV Substation and the proposed new substation. A 9-mile 161-kV transmission line would connect the new substation to MTEMCs existing Almadale 161-kV Substation; 6 miles of this line would be on vacant TVA-owned ROW, and the remainder would be on new ROW. A 15-mile 161-kV transmission line on new ROW would connect the new substation to MTEMCs existing Christiana 161-kV Substation.

The proposed substation would occupy a 53-acre site and about 40 acres of it would be cleared and graded. Major substation components include 500–161-kV transformers, circuit breakers, connecting bus work, supporting steel superstructure, ground wire towers, microwave communication tower, spill retention basins and retention pond or tank, switch house, and equipment storage building, enclosed by a security fence. The proposed 500-kV transmission line would use self-supporting galvanized, laced steel structures about 85 to 125 feet tall. The average distance between structures would be about 1000 feet. The electrical conductors would consist of three sets of three cables suspended beneath the structure cross-arms by insulators. The proposed 161-kV transmission lines would use either single or double steel-pole structures 80 to 110 feet tall and three single-cable conductors suspended beneath cross-arms by insulators.

Most of the ROW for the 500-kV transmission line would be 175 feet wide; about two miles of the ROW near the proposed substation would be 425 feet wide to accommodate parallel lower voltage lines. For ROW it does not already own, TVA would purchase easements from landowners. Because of the need to maintain adequate clearance between tall vegetation and the transmission line conductors, as well as to provide access for construction equipment, most trees and shrubs would initially be removed from the

entire width of the ROW. Trees outside of the ROW which are tall enough to pass within 10 feet of a conductor if they fell towards the line would also be removed. Following line construction, the ROW would be revegetated with low-growing plants. The ROW can be used by the landowner for many purposes that do not interfere with the maintenance and operation of the line. TVA would periodically inspect and conduct maintenance activities on the completed line. The major maintenance activity is vegetation management, conducted to maintain adequate clearance around the conductors. This would consist of both felling tall trees adjacent to the ROW and control of vegetation within the ROW. Management of vegetation within the ROW would use an integrated vegetation management approach based primarily on mechanical mowing and herbicide application.

#### Comments on the Final EIS

TVA received comments on the Final EIS from two State and two Federal Government agencies. The Environmental Protection Agency (EPA) requested a comparison of the number of stream crossings potentially affected by the various alternative solutions. Although TVA did not conduct detailed field surveys of the Pinhook and Brentwood alternative solutions and thus cannot compare the number of potentially affected stream crossings with the same accuracy available for the Rutherford solution, the Pinhook and Brentwood solutions would potentially affect more stream crossings because they both involve over twice the length of transmission lines. The potential impacts to individual stream crossings under the Pinhook and Brentwood solutions, however, would likely be less because the transmission lines and most of the potential access roads already exist and there would be little to no clearing of new ROWs.

EPA commented on the discussion of potential impacts to wetlands in the Final EIS and noted that conversion of forested wetlands is impactful given the loss of forest habitat and fragmentation of contiguous habitat. TVA agrees with this and notes that the 2.3 acres of forested wetlands that would be converted to scrub-shrub wetlands under the selected alternative occur in several disjunct tracts associated with previously fragmented forests.

EPA requested additional information on the anticipated relocation and proximity of homes, schools, and churches to the proposed transmission lines, as well as the potential environmental justice impacts. Two

mobile homes and one occupied house occur entirely within the TVA-owned ROW to be used for the 500-kV line, and a vacant brick house is partially within this ROW. All of these buildings would be relocated. Two fairly new brick houses slightly extend onto this ROW; TVA has determined that they would not have to be removed and will likely issue their owners a permit for the occupancy of the ROW and add an associated covenant to their deeds. One vacant house in a state of disrepair is on one of the 161-kV FOWs and would be removed. No occupied buildings are on or in the immediate vicinity of the substation site. Six churches occur near the route of the 500-kV line; their closest and average distances from the ROW are 500 and 2,500 feet, respectively. The closest school to any of the facilities is an elementary school 3,000 feet from a 161-kV line. The closest churches are 400 and 1,200 feet from a 161-kV line. Relative to the three project area counties, the proportions of the overall population of the 12 adjacent surrounding counties classified as minority or below the poverty level vary greatly and are, on average, higher.

EPA requested spot monitoring of electromagnetic fields (EMF) in the vicinity of nearby residences. TVA does not intend to conduct EMF monitoring; TVA will, however, measure EMF field strength if requested to do so by adjacent property owners. Based on the design of the 500-kV transmission line and EMF measurements at other similar lines, TVA expects the EMF field strength under the maximum design electrical load at the edge of the 500-kV ROW to be significantly less than the Florida standards of 150 milligauss for lines 230-kV or less and 200 milligauss for lines 500-kV lines or more cited in the Final EIS.

The Department of the Interior (DOI), Office of Environmental Policy and Compliance resubmitted the comments it had sent on the Draft EIS and which TVA had inadvertently failed to address in the Final EIS. DOI requested supporting references for many statements of fact and field survey descriptions. DOI also requested more specific information on the implementation of best management practices (BMPs). Some of this detailed implementation information is listed in Appendices H and J of the Final EIS, which describe the streamside management zone to be established along each watercourse. Additional BMP implementation details are listed in the stormwater pollution prevention plans for the various project components. TVA's BMP manual, cited as Muncy (1999) in the Final EIS, is

available on the TVA Web site, [www.tva.com](http://www.tva.com).

### Decision

TVA has decided to implement the preferred alternative identified in the Final EIS, Alternative 2. Of the two alternatives evaluated in the Final EIS, Alternative 1—No Action and Alternative 2, only Alternative 2 would meet the purpose and need. TVA used an iterative process to define Alternative 2; this process first considered other potential solutions and then considered various potential alternative substation locations and transmission line routes for the preferred alternative. The substation location and transmission line routes were identified as part of Alternative 2 after being evaluated for engineering and construction, ecological, cultural, line length, and land use criteria. The substation site and transmission line routes were then further modified to minimize effects on individual landowners as well as effects on natural and cultural resources. This effort continued TVA's consideration of potential environmental impacts that occurred during the consideration of other possible solutions (alternatives) to the purpose and need here.

The Tennessee State Historic Preservation Officer has concurred with TVA's determination that Alternative 2, with the implementation of mitigation measures described in a Memorandum of Agreement and other measures listed in the Final EIS, would not adversely affect any archaeological or historic sites eligible for or listed in the National Register of Historic Places. The U.S. Fish and Wildlife Service has concurred with TVA's determination that Alternative 2, with the implementation of mitigation measures listed in the Final EIS, would not adversely affect species listed under the Endangered Species Act or adversely modify designated critical habitat.

### Environmentally Preferred Alternative

Alternative 1 No Action is the environmentally preferred alternative because the impacts associated with constructing and operating the substation and associated transmission lines would not occur. This alternative, however, would result in the risk of the loss of electrical service to a large area of Middle Tennessee with a total load of over 4000 megawatts and is considered unreasonable. The loss of this electrical service would result in social and economic impacts.

Alternative 2 has been designed to minimize environmental impacts as much as is feasible. While some or all of the other three potential solutions

analyzed early in the development of this project could have resulted in less environmental impacts than Alternative 2, none of these solutions would have met the purpose and need and thus they were not considered reasonable alternatives.

### Environmental Commitments

For the reasons discussed in the Final EIS and summarized here, TVA is committing to the following measures to avoid, reduce, or mitigate the potential environmental impacts associated with these actions:

- No herbicides with groundwater protection warnings will be used in the sections of the Maury Transmission Line between Double Branch and Double Branch Road, Greens Mill Road and Cornstock Road, and Cross Keys Flat to Boon Creek. No fertilizers will be used in the groundwater source protection zone from Windrow Road to the end of the Maury Transmission Line study area, and neither herbicides nor fertilizers will be used in the section of the Maury Transmission Line from Windrow Road to Arno-Allisona Road.

- No herbicides with groundwater protection warnings and no fertilizers will be used in the sections of the Almalville Transmission Line from where the ROW intersects the existing Murfreesboro-East Franklin Transmission Line north to where the Almalville Transmission Line turns to the west.

- No herbicides with groundwater protection warnings and no fertilizers will be used in the section of the Christiana Transmission Line within 500 feet of the entrance to Nanna Cave.

- Should groundwater conduits be discovered within the TVA transmission line ROW at a later date that affect the stream at Snail Shell Cave or Nanna Cave, TVA will modify its construction and maintenance procedures to eliminate herbicide use in the conduit areas.

- Globally rare glade habitat areas will be marked on the transmission line and access road engineering design specification drawings that will be used during the design, construction, and maintenance activities along the transmission line.

- During the construction and maintenance of the transmission lines, TVA will avoid the areas associated with the globally rare glade habitats. Unless there is no practical alternative, structure placement and access roads will be designed strategically to avoid these areas. The glade areas will be fenced during construction to ensure further avoidance.

- Vegetation management in globally rare glade habitats will be accomplished through mechanical clearing and no herbicides will be used in these areas.

- No herbicide spraying or mechanical clearing will occur within a 500-foot radius of the entrance to Nanna Cave during the construction and maintenance of the transmission lines to avoid impacts caused by pollution from chemicals and sedimentation from disturbed soil. This area will be hand cleared only (chainsaws may be used, but not heavy equipment). All vehicles and heavy equipment will be restricted from the area unless confined to existing access roads. If the placement of a pole in this buffer or in the area of this route crossing a subterranean section of the Snail Shell Cave System was unavoidable, no blasting will be used during its installation.

- To minimize potential impacts to aquatic habitats and aquatic life, including federally or state-listed species, BMPs as outlined in Muncy (1999) will be applied to all construction and maintenance activities. Additionally, all intermittent and perennial streams were assigned a Category A protection level (Final EIS Appendix J) and will be provided additional protective measures as defined in Final EIS Appendix H and Muncy (1999).

- Areas with state-listed plant species will be included in the transmission line and access road engineering design specification drawings used during the design, construction, and maintenance of the transmission line. During construction and maintenance, TVA will avoid the areas occupied by the state-listed plants. Unless there is no practical alternative, structures will be placed to avoid impacting these areas. Additionally, unless there is no practical alternative, access roads and the associated vehicle traffic will be excluded from these areas. These areas will be fenced during construction. Vegetation management in these areas will be accomplished through mechanical clearing, and no herbicides will be applied in them.

- The location of the toothache tree population along the Maury Transmission Line ROW will be included on the engineering design specification drawings for use during the design, construction, and maintenance of the transmission line. TVA will clear the ROW between November and March when the plant is dormant; shear-clearing (bulldozing) methods will not be used. Vegetation management in the area will be accomplished by mechanical clearing

(e.g., mowing). Herbicides will not be used in this area.

- The location of the Alabama snow-wreath population will be included on the engineering design specification drawings for use during the design, construction, and maintenance of the transmission line. All construction occurring within 200 feet of the Alabama snow-wreath population will be strictly confined to areas within the Christiana Transmission Line ROW. In addition, fencing will be erected along the edge of the ROW during construction to ensure impacts to Alabama snow-wreath are avoided. Vegetation management within 200 feet of the snow-wreath population will be accomplished by mechanical clearing, and herbicides will not be used in this area.

- The location of Pynes ground-plum will be marked on the engineering design specification drawings for use during the design, construction, and maintenance of the transmission line. Vehicles, construction equipment, and unnecessary personnel will strictly be prohibited from disturbing the population. This will be accomplished by explicitly instructing construction crews to remain on the Christiana Transmission Line ROW in the immediate vicinity of the population and to avoid any activity in this area (felling trees, grading, inadvertently accessing the site with vehicles, etc.) that will alter the habitat. In addition, fencing will be erected along the edge of the ROW during construction to ensure impacts to Pynes ground-plum are avoided. Vegetation management within 500 feet of the ground-plum population will be accomplished by mechanical clearing; herbicides will not be used in this area.

- Prior to the transmission line construction clearing, TVA will contract with the state of Tennessee to treat all tree-of-heaven within the proposed Almaden Transmission Line ROW to reduce the risk of spreading within the designated critical habitat. This will be accomplished by using a basal bark application of Garlon 4 herbicide before trees are cleared from the proposed ROW. The tank mixture will consist of a 20 percent Garlon 4/80 percent carrier solution of specially formulated vegetable oil. Using a backpack sprayer, herbicide will be applied to the trunk of each tree-of-heaven stem from ground level to 18 inches high. All areas of the trunk in this band will be thoroughly wetted with herbicide.

- Timber harvesting for ROW clearing in six areas of moderately suitable habitat for the Indiana bat will take

place between October 15 and March 31.

- To minimize potential impacts to the gray bat, a 500-foot-radius buffer at the entrance to Nanna Cave and standard BMPs at all stream crossings (Muncy 1999) will be implemented during the construction and maintenance of the transmission lines.

- Access roads that contain habitat for federally and state-listed species will be resurveyed during the growing season prior to use for any ROW construction or clearing. Should an occurrence(s) be found within the area encompassing any of the access roads as proposed, the occurrence(s) will be avoided by either rerouting the access road or not using that particular access road. Any new roads that will be considered as alternatives will also be surveyed before their use.

- In order to avoid adverse effects to archaeological site 40WM35, TVA will not place transmission line structures within the site or cause other ground disturbance of the site. If impacts to the site cannot be avoided in this manner, TVA will conduct further Phase II archaeological testing to identify locations for structure placement that will not adversely affect the site.

- Archaeological sites 40RD280 and 40RD281 will be avoided by the rerouting of a section of the Christiana Transmission Line.

- TVA will implement the treatment measures necessary to mitigate adverse effects on two historic sites, the William Allison house and the Smithson-McCall farm. As described in a Memorandum of Agreement developed between TVA, the Tennessee State Historical Preservation Officer, and other interested parties (Appendix B-1), these measures include minimizing the number and height of the structures within the line-of-site and the use, where possible, of vegetative screening measures at the landowners request.

Dated: June 5, 2008.

**Jacinda B. Woodward,**

*Interim Vice President, Electric System Projects.*

[FR Doc. E8-14146 Filed 6-23-08; 8:45 am]

**BILLING CODE 8120-08-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-33 (Sub-No. 264X)]

#### Union Pacific Railroad Company— Abandonment Exemption—in Saline County, MO

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon the Marshall Industrial Lead, a 6.2-mile line of railroad, extending from milepost 0.0 to milepost 2.2, in Saline County, MO.<sup>1</sup> The line traverses United States Postal Service Zip Code 65340.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 24, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>2</sup>

<sup>1</sup> This description is derived from the 1918 Missouri Pacific Railroad Company valuation map showing the line as being from survey station 0+00 at the connection with the River Subdivision, hereinafter equaling milepost 0.0, to survey station 116+59 at the connection with Kansas City Southern (KCS), hereinafter equaling milepost 2.2, in and around Marshall.

<sup>2</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>3</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 7, 2008. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 14, 2008, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed a combined environmental and historic report addressing the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 27, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 245-0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by June 24, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "<http://www.stb.dot.gov>."

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Decided: June 18, 2008.

**Anne K. Quinlan,**  
Acting Secretary.

[FR Doc. E8-14102 Filed 6-23-08; 8:45 am]

**BILLING CODE 4915-01-P**

so that the Board may take appropriate action before the exemption's effective date.

<sup>3</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,300. See 49 CFR 1002.2(f)(25).

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### Agency Information Collection Activities: Proposed Information Collection; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Fair Housing Home Loan Data System Regulation—12 CFR 27."

**DATES:** You should submit your comments by August 25, 2008.

**ADDRESSES:** You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1-5, Attention: 1557-0159, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874-4448, or by electronic mail to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov). You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874-5043. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557-0159, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information from Mary Gottlieb, OCC Clearance Officer, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The OCC is proposing to revise the following information collection:

*Title:* Fair Housing Home Loan Data System Regulation—12 CFR 27.

*OMB Control No.:* 1557-0159.

*Description:* The Fair Housing Act (42 U.S.C. 3605) prohibits discrimination in the financing of housing on the basis of race, color, religion, sex, or national origin. The Equal Credit Opportunity Act (15 U.S.C. 1691 *et. seq.*) prohibits discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of income from public assistance, or exercise of any right under the Consumer Credit Protection Act. The OCC is responsible for ensuring that national banks comply with those laws. This information collection is needed to promote national bank compliance and for OCC to fulfill its statutory responsibilities.

The information collection requirements in 12 CFR part 27 are as follows:

- Section 27.3(a) requires a national bank that is required to collect data on home loans under 12 CFR part 203 to present the data on Federal Reserve Form FR HMDA-LAR,<sup>1</sup> or in automated format in accordance with the HMDA-LAR instructions, and to include one additional item (the reason for denial) on the HMDA-LAR. Section 27.3(a) also lists exceptions to the HMDA-LAR recordkeeping requirements.

- Section 27.3(b) lists the information banks should obtain from an applicant as part of a home loan application, and states information that a bank must disclose to an applicant.

- Section 27.3(c) sets forth additional information required to be kept in the loan file.

- Section 27.4 states that the OCC may require a national bank to maintain a Fair Housing Inquiry/Application Log found in Appendix III to part 27 if there is reason to believe that the bank is engaging in discriminatory practices or if analysis of the data compiled by the bank under the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et. seq.*) and 12 CFR part 203 indicates a pattern of significant variation in the number of home loans between census tracts with similar incomes and home ownership levels differentiated only by race or national origin.

- Section 27.5 requires a national bank to maintain the information required by § 27.3 for 25 months after the bank notifies the applicant of action

<sup>1</sup> Loan Application Register, <http://www.ffiec.gov/hmda/doc/hmdalar2007.doc>.

taken on an application, or after withdrawal of an application.

- Section 27.7 requires a national bank to submit the information required by §§ 27.3(a) and 27.4 to the OCC upon its request, prior to a scheduled examination using the Monthly Home Loan Activity Format form in Appendix I to part 27 and the Home Loan Data Form in Appendix IV to part 27.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Businesses or other for-profit.

*Estimated Number of Respondents:* 1,712.

*Estimated Total Annual Responses:* 2,871.

*Estimated Frequency of Response:* On occasion.

*Estimated Time per Respondent:* 2.68 hours.

*Estimated Total Annual Burden:* 4,595.84 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 16, 2008.

**Michele Meyer,**

*Assistant Director, Legislative and Regulatory Activities Division.*

[FR Doc. E8-14169 Filed 6-23-08; 8:45 am]

**BILLING CODE 4810-33-P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### Joint-Federal Retirement Thrift Investment Board/Employee Thrift Advisory Council Meeting; Sunshine Act; Notice of Meeting

**TIME AND DATE:** 9 a.m. (Eastern Time), June 30, 2008.

**PLACE:** 2nd Floor Training Room, 1250 H Street, NW., Washington, DC 20005.

**STATUS:** Parts will be open to the public and parts closed to the public.

#### **MATTERS TO BE CONSIDERED:**

##### **Parts Open to the Public**

1. Approval of the minutes of the May 19, 2008 Board member meeting.

2. Approval of the minutes of the December 19, 2007 ETAC meeting.

3. Thrift Savings Plan activity report by the Executive Director.

a. Participant Activity Report.

b. Investment Performance Report.

4. New Business.

a. TSP System Modernization.

b. Congressional discussion draft on (1) automatic enrollment, (2) L Fund default option, (3) Roth account option, (4) Board authority to add funds or create a self-directed mutual fund window.

c. Allowing a spousal beneficiary to inherit and maintain a TSP account.

##### **Parts Closed to the Public**

5. Procurement/Confidential Vendor Financial Data.

6. Security.

#### **FOR MORE INFORMATION CONTACT:**

Thomas J. Trabucco, Director, Office of External Affairs, (202) 942-1640.

Dated: June 19, 2008.

**Thomas K. Emswiler,**

*Secretary, Federal Retirement Thrift Investment Board.*

[FR Doc. 08-1383 Filed 6-20-08; 8:47 am]

**BILLING CODE 6760-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

### Health Services Research and Development Service Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Health Services Research and Development Service Merit Review Board will be held August 19-21, 2008, at the Hyatt Harborside at Boston's Logan International Airport, 101 Harborside Drive, Boston, Massachusetts. Various subcommittees of the Board will meet during the review period. Each subcommittee meeting of the Merit Review Board will be open to the public the first day for approximately one half-hour from 8 a.m. until 8:30 a.m. to cover administrative matters and to discuss the general status of the program. The remaining portion of the meetings will be closed. The closed portion of each meeting will

involve discussion, examination, reference to, and oral review of the research proposals and critiques.

The purpose of the Board is to review research and development applications involving the measurement and evaluation of health care services, the testing of new methods of health care delivery and management, and nursing research. Applications are reviewed for scientific and technical merit. Recommendations regarding funding are submitted to the Chief Research and Development Officer.

On August 19, the subcommittee on Nursing Research Initiative will convene from 8 a.m. to 5 p.m. On August 20-21, five subcommittees—Health Services Research A, Health Services Research B, Health Services Research C, Health Services Research D, and Health Services Research E—will convene from 8 a.m. to 5 p.m.

After the subcommittees meet there will be a debriefing provided to members of the Health Services Research & Development Scientific Merit Review Board. The purposes of the debriefing are to discuss the outcomes of the review sessions and to ensure the integrity and consistency of the review process.

During the closed portion of each meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would likely compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, closing portions of each meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the open session should contact Ms. Rita Lysik, Scientific Merit Review Program Manager, at (202) 254-0225, or Health Services Research and Development Service (124R), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at least five days before the meeting.

By Direction of the Secretary.

Dated: June 16, 2008.

**E. Philip Riggan,**

*Committee Management Officer.*

[FR Doc. E8-14009 Filed 6-23-08; 8:45 am]

**BILLING CODE 8320-01-M**



**DEPARTMENT OF VETERANS  
AFFAIRS**

**Summary of a Precedent Opinion of  
the General Counsel**

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Notice.

**SUMMARY:** The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters involving the same legal issues. The summary is published to provide the public, and, in particular, veterans' benefits claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

**FOR FURTHER INFORMATION CONTACT:**  
Susan P. Sokoll, Law Librarian,  
Department of Veterans Affairs, 810  
Vermont Avenue, NW., (026H),  
Washington, DC 20420, (202) 461-7623.

**SUPPLEMENTARY INFORMATION:** VA  
regulations at 38 CFR 2.6(e)(8) and  
14.507 authorize the Department's

General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The interpretations of the General Counsel on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals involving the same legal issues, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist veterans' benefits claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above or by accessing the opinions on the internet at <http://www1.va.gov/OGC/>.

**VAOPGPCREC 1-2008**

*Questions Presented*

May VA reimburse a veteran who submitted an initial application for Specially Adapted Housing assistance but who, before filing a supplemental application, paid in full the costs of acquiring the adapted home?

*Held*

The Secretary is authorized to provide Specially Adapted Housing assistance to a veteran if: (i) The veteran submitted a VA Form 26-4555 prior to paying in full the costs of the adapted home; (ii) the veteran was not seeking reimbursement for adaptations made prior to the date of application or for unspecified future adaptations; (iii) the veteran later submitted VA Form 26-4555c; and (iv) the Secretary determines that the veteran and the veteran's adapted home meet all other statutory and regulatory requirements.

*Effective date:* June 2, 2008.

Dated: June 17, 2008.

By Direction of the Secretary.

**Paul J. Hutter,**

*General Counsel.*

[FR Doc. E8-14209 Filed 6-23-08; 8:45 am]

**BILLING CODE 8320-01-P**



# Federal Register

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**Tuesday,  
June 24, 2008**

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## **Part II**

### **Department of Agriculture**

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**Forest Service**

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**36 CFR Part 242**

### **Department of the Interior**

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**Fish and Wildlife Service**

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**50 CFR Part 100**

**Subsistence Management Regulations for  
Public Lands in Alaska—2008–09 and  
2009–10 Subsistence Taking of Wildlife  
Regulations; Final Rule**

**DEPARTMENT OF AGRICULTURE****Forest Service****36 CFR Part 242****DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 100**

[FWS-R7-SM-2008-0020; 70101-1261-0000L6]

RIN 1018-AV69

**Subsistence Management Regulations for Public Lands in Alaska—2008–09 and 2009–10 Subsistence Taking of Wildlife Regulations****AGENCIES:** Forest Service, Agriculture; Fish and Wildlife Service, Interior.**ACTION:** Final rule.

**SUMMARY:** This final rule establishes regulations for seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses in Alaska during the 2008–09 and 2009–10 regulatory years. These regulations have been subject to an annual public review cycle, but starting in 2008 the Federal Subsistence Management Program will provide a public review process for subsistence hunting and trapping regulations in even-numbered years and subsistence fishing and shellfish regulations in odd-numbered years. The Program will also address customary and traditional use determinations during the applicable biennial cycle. This cycle adjustment does not affect the public's ability to submit special action requests or requests for reconsideration, as outlined in the regulations. This rulemaking replaces the subpart D subsistence taking of wildlife taking regulations which expire June 30, 2008. This rule also amends the customary and traditional use determinations of the Federal Subsistence Board.

**DATES:** Sections \_\_\_\_ .24(a)(1) and \_\_\_\_ .25 are effective July 1, 2008. Section \_\_\_\_ .26 is effective July 1, 2008, through June 30, 2010.

**ADDRESSES:** The Board meeting transcripts are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, Alaska 99503, or on the Office of Subsistence Management Web site (<http://alaska.fws.gov/asm/home.html>).

**FOR FURTHER INFORMATION CONTACT:** Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of

Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786–3592.

**SUPPLEMENTARY INFORMATION:****Background**

In title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), Congress found that “the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses. \* \* \*” and that “continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened. \* \* \*” As a result, title VIII requires, among other things, that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on Federal public lands and waters in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA.

The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from its subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, on July 1, 1990, the Department of the Interior and the Department of Agriculture (Departments) assumed responsibility for implementation of title VIII of ANILCA on public lands and waters. In anticipation of carrying out this responsibility, the Departments published temporary subsistence management regulations for public lands in Alaska in the **Federal Register** on June 29, 1990 (55 FR 27114). Because the State was unable to create a program in compliance with title VIII, the Departments published final subsistence management regulations in the **Federal Register** in 1992 (57 FR 22940, May 29, 1992).

As a result of this joint process between Interior and Agriculture, these regulations can be found in two titles of the Code of Federal Regulations (CFR): Title 36, “Parks, Forests, and Public Property,” and title 50, “Wildlife and Fisheries,” at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain subparts as follows: subpart A, General Provisions; subpart B, Program Structure; subpart C, Board Determinations; and subpart D, Subsistence Taking of Fish and Wildlife. Throughout this document, a reference to a specific CFR section that is preceded by an underscore (e.g., § \_\_\_\_ .24) means that that section appears in both 36 CFR 242 and 50 CFR 100.

Consistent with subparts A, B, and C of these regulations, as revised May 7, 2007 (72 FR 25688), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, U.S. National Park Service;
- The Alaska State Director, U.S. Bureau of Land Management;
- The Alaska Regional Director, U.S. Bureau of Indian Affairs; and
- The Alaska Regional Forester, U.S. Forest Service.

Through the Board, these agencies participate in the development of regulations for subparts A and B, which set forth and guide the program, subpart C, which addresses Board determinations, and subpart D, which covers subsistence taking of fish and wildlife.

**Federal Subsistence Regional Advisory Councils**

The Federal subsistence management regulations divide Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council) (36 CFR 242.11 and 50 CFR 100.11). The Regional Councils provide a forum for rural residents, who have personal knowledge of local conditions and resource requirements, to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands and waters. The Regional Council members represent varied geographical, cultural, social, and user diversity within each region.

These regulations have been subject to an annual public review cycle, but

starting in 2008 the Federal Subsistence Management Program will provide a public review process for subsistence hunting and trapping regulations in even-numbered years and subsistence fishing and shellfish regulations in odd-numbered years. The Program will also address customary and traditional use determinations during the applicable biennial cycle. This cycle adjustment does not affect the public's ability to

submit special action requests or requests for reconsideration, as outlined in the regulations. Section \_\_\_\_\_.24 (customary and traditional use determinations) was originally published in the **Federal Register** on May 29, 1992 (57 FR 22940). The regulations at 36 CFR 242.4 and 50 CFR 100.4 define "customary and traditional use" as "a long-established, consistent pattern of use, incorporating beliefs and

customs which have been transmitted from generation to generation. \* \* \*" Since that time, the Board has made a number of customary and traditional use determinations at the request of impacted subsistence users. Those modifications, along with some administrative corrections, were published in the **Federal Register** as follows:

MODIFICATIONS TO § \_\_\_\_\_.24.

[These regulations appear in both 36 CFR 242 and 50 CFR 100]

Federal Register citation:	Date of publication:	Rule made changes to the following provisions of _____.24:
59 FR 27462 .....	May 27, 1994 .....	Wildlife and Fish/Shellfish.
59 FR 51855 .....	October 13, 1994 .....	Wildlife and Fish/Shellfish.
60 FR 10317 .....	February 24, 1995 .....	Wildlife and Fish/Shellfish.
61 FR 39698 .....	July 30, 1996 .....	Wildlife and Fish/Shellfish.
62 FR 29016 .....	May 29, 1997 .....	Wildlife and Fish/Shellfish.
63 FR 35332 .....	June 29, 1998 .....	Wildlife and Fish/Shellfish.
63 FR 46148 .....	August 28, 1998 .....	Wildlife and Fish/Shellfish.
64 FR 1276 .....	January 8, 1999 .....	Fish/Shellfish.
64 FR 35776 .....	July 1, 1999 .....	Wildlife.
65 FR 40730 .....	June 30, 2000 .....	Wildlife.
66 FR 10142 .....	February 13, 2001 .....	Fish/Shellfish.
66 FR 33744 .....	June 25, 2001 .....	Wildlife.
67 FR 5890 .....	February 7, 2002 .....	Fish/Shellfish.
67 FR 43710 .....	June 28, 2002 .....	Wildlife.
68 FR 7276 .....	February 12, 2003 .....	Fish/Shellfish.

Note: The Board met May 20–22, 2003, but did not make any additional customary and traditional use determinations.

69 FR 5018 .....	February 3, 2004 .....	Fish/Shellfish.
69 FR 40174 .....	July 1, 2004 .....	Wildlife.
70 FR 13377 .....	March 21, 2005 .....	Fish/Shellfish.
70 FR 36268 .....	June 22, 2005 .....	Wildlife.
71 FR 15569 .....	March 29, 2006 .....	Fish/Shellfish.
71 FR 37642 .....	June 30, 2006 .....	Wildlife.
72 FR 12676 .....	March 16, 2007 .....	Fish/Shellfish.

Note: The Board met December 11–13, 2007, but did not make any additional customary and traditional use determinations.

72 FR 73426 .....	December 27, 2007 .....	Wildlife/Fish.
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**Current Rule**

The Departments published a proposed rule on April 17, 2008 (73 FR 20884), to amend subparts C and D of 36 CFR 242 and 50 CFR 100. The Departments advertised the proposed rule by mail, radio, and newspaper. During the comment period, the Regional Councils met and, in addition to other Regional Council business, received suggestions for proposals from the public. The Board received 41 proposals for changes to subparts C and D. In addition, 13 Board-deferred proposals were brought forward for a total of 54 proposals. After the proposal period closed, the Board prepared a booklet describing the proposals that was distributed to the public; this booklet was also available online. Once the booklet was distributed, the public had an additional 30 days in which to

comment on the proposals for changes to the regulations.

The 10 Regional Councils met a second time to receive public comments and formulated their recommendations to the Board on proposals affecting their respective regions. The Regional Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, a Council Chair, or a designated representative, presented each Council's recommendations at the Board meeting of April 29–May 1, 2008. These final regulations reflect Board review and consideration of Regional Council recommendations and public comments. The public has had extensive opportunity to review and comment on all changes.

Of the 54 proposals, the Board adopted 23, rejected 25, and deferred 6.

Of the 23 adopted proposals, 15 were with modifications; of the 25 rejected proposals, 1 was based on action that the Board had taken on previous related proposals. The Board deferred 6 proposals to allow collection of additional information or to allow for working groups to meet and provide clarification.

Detailed information relating to justification for the action on each proposal may be found in the Board meeting materials and transcripts, available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, Alaska 99503, or on the Office of Subsistence Management Web site (<http://alaska.fws.gov/asm/home.html>).

### Summary of Proposals Rejected or Deferred by the Board

The Board rejected or deferred 31 proposals. The rejected proposals were recommended for rejection by one or more of the Regional Councils.

The Board rejected a statewide proposal to extend wolf hunting and trapping seasons, increase the harvest limits, and remove restrictions on disturbing or destroying wolf dens because of a concern that the proposal violates recognized principles of wildlife conservation.

The Board deferred a proposal to remove unit-specific regulations related to the statewide sale of brown bear handicrafts made of skin, hide, pelt or fur and then limit the sale of brown bear handicrafts made of claws, bones, teeth, sinew, or skulls to occur only between Federally qualified subsistence users. This deferment will allow creation of a working group to address the feasibility of marking and tracking bear claws.

The Board deferred a proposal to recognize customary and traditional use of moose by rural residents of Units 1C and 1D and establish a season and harvest limit for moose in the Berners Bay drainages. The deferment will allow additional time to analyze customary and traditional use of Unit 1C moose by rural residents of Units 1–5.

The Board rejected a proposal to change the subsistence allocation for moose in Unit 6C as unnecessarily restrictive for subsistence users.

The Board rejected two proposals to change the salvage requirements for brown bear in Unit 11 because of a lack of substantial evidence for customary and traditional practices specific to the proposals.

The Board rejected two proposals to eliminate the late fall Federal moose seasons in Units 15B and 15C because current regulations address conservation concerns and this proposal would be unnecessarily restrictive for subsistence users.

The Board rejected three proposals to turn in or destroy the trophy value of moose antlers in Unit 15 because of a concern that these proposals are unnecessarily restrictive for subsistence users.

The Board deferred two proposals for moose in Units 9B and 9C; one proposal would shorten the Federal subsistence season in Unit 9B, and the other would close Federal public lands in Unit 9B and a portion of Unit 9C to the taking of moose by non-Federally qualified subsistence users. This deferment will allow additional time for stakeholders to address alternate solutions to resolve concerns regarding the current moose population and harvest levels.

The Board rejected a proposal to add Unit 11 to the list of units that can use brown bear parts for handicrafts for sale. The Board has consistently emphasized that regulations for brown bear handicrafts are not appropriate as statewide regulations and should be adopted only for those regions where it has been a traditional practice. The Southcentral Alaska Regional Advisory Council reiterated its opposition to the sale of brown bear handicrafts in Unit 11.

The Board rejected a proposal that would have added Kachemak-Selo, Razdolna, and Voznesenka to the customary and traditional use determination for moose in Units 15B and 15C. Insufficient information was available to evaluate these communities' customary and traditional use of moose.

The Board rejected a proposal to close Federal public land in a portion of Unit 18 to non-Federally qualified users to hunt moose. The Board found that the proposal was not supported by substantial evidence. Because of the current status of the moose population, ANILCA section 815.3 does not allow the proposed closure.

Based on conservation concerns, the Board rejected a proposal to establish a moose season in a portion of Unit 19A.

The Board rejected two proposals requesting customary and traditional use determinations for ground squirrel and porcupine in Unit 22 by residents of Unit 22. Current Federal subsistence regulations list these animals as unclassified wildlife. The Board does not make customary and traditional use determinations for unclassified wildlife.

Because of Board action on other proposals, the Board rejected a proposal on designated hunters in Unit 22A.

The Board rejected nine proposals for customary and traditional use determinations for residents of Unit 22 for beaver, Arctic fox, red fox, hare, lynx, marten, wolverine, grouse, and ptarmigan in Unit 22. These proposals were rejected because they would be detrimental to the satisfaction of subsistence needs by those residing in surrounding units. Rejection of these proposals has no effect on subsistence users in Unit 22 or surrounding units.

The Board deferred two proposals that would have changed the time period for aircraft flight restrictions over the Noatak Controlled Use Area. These proposals were deferred to allow a working group to present alternate courses of actions or recommendations concerning the Noatak Controlled Use Area.

### Summary of Proposals Adopted by the Board

The Board adopted 23 proposals. Some of these proposals were adopted as submitted. Others were adopted with modifications suggested by the respective Regional Council, modifications developed during the analysis process, or modifications developed during the Board's public deliberations.

All of the adopted proposals were recommended for adoption by at least one of the Regional Councils, although further modifications were made to some during Board deliberations, and were based on customary and traditional uses or harvest practices, or on protecting wildlife populations.

#### *Southeast Alaska*

The Board adopted a proposal associated with deer harvest in Units 1B and 3. The modified proposal allows the Petersburg District Ranger to announce a December season in Unit 3, remainder and to close the seasons in Units 1B and 3 based on conservation concerns.

#### *Southcentral Alaska*

The Board adopted two proposals extending the Unit 11 wolverine trapping season and modified it to align that season with the lynx trapping season.

The Board adopted a proposal with modifications to lengthen the goat season in a portion of Unit 11 that is bounded by the Chitina and Nizina rivers on the south, the Kennicott River and glacier on the southeast, and the Root Glacier on the east.

The Board adopted a proposal with a modification to establish a muskrat hunting season in Unit 11.

The Board adopted a proposal with modifications to allow for the harvest of 5 deer in Unit 6D by the Native Village of Chenega for an annual memorial event.

The Board adopted a proposal with modifications to allow for the harvest of 5 deer in Unit 6D by the Tatitlek IRA Council for their annual cultural heritage week.

The Board adopted a proposal with a modification to allow a designated hunter to harvest a goat in Unit 6D on behalf of a Federally qualified user who is either blind, 65 years of age or older, at least 70% disabled, or temporarily disabled.

The Board adopted a proposal to expand the beaver trapping season in Unit 11 and change the harvest limit to "no limit".

The Board adopted a proposal to re-establish a Federal registration permit

for moose in that portion of Denali National Preserve in Unit 16B remainder.

The Board adopted a proposal with modifications to recognize a customary and traditional use determination for moose by residents of Cooper Landing in Units 7 and 15A and 15B and establish a season and harvest limit in Unit 7.

#### *Bristol Bay*

The Board adopted a proposal with modification to recognize a customary and traditional use determination for brown bear for residents of Igiugig, Kakhonak, and Levelock in Unit 9C and establish a season and harvest limit by Federal registration permit.

The Board adopted a proposal with modification to more clearly define who is eligible to participate in the resident zone subsistence brown bear hunt in Unit 9B.

The Board adopted a proposal to include residents of Units 9A, 9B, 9C, 9E, and 17 in the general provisions allowing designated hunter provisions for deer, moose, and caribou.

The Board adopted a proposal for Unit 9 to require that all edible meat of moose and caribou remain on the bone until the meat is removed from the field or is processed for human consumption.

#### *Kodiak Aleutians*

The Board adopted two proposals focused on caribou in Units 9D and 10. In Unit 9D the Federal season was closed due to a low caribou population, and in Unit 10, the harvest limit was reduced because of a caribou population decline.

#### *Yukon-Kuskokwim Delta*

The Board adopted a proposal with modification to establish a moose season in Unit 18 in the Goodnews River drainage, and south to the unit boundary.

#### *Seward Peninsula*

The Board adopted two proposals with modifications to remove a closure to moose hunting in Unit 22A only for residents of Unalakleet, and to establish a season for those residents.

#### *Northwest Arctic*

The Board adopted a proposal to add Unit 23 to the list of areas from which the skin, hide, pelt or fur, including

claws of brown bears can be used to make handicrafts for sale.

#### *North Slope*

The Board adopted a proposal with modification to add Unit 26 and a portion of Unit 24B to the list of areas from which the skin, hide, pelt or fur, including claws of brown bears can be used to make handicrafts for sale.

The Board adopted a proposal with modification for moose in Unit 26C and portions of Unit 26B to adjust the harvest requirement from bulls to antlered bulls. Other proposed changes violated principles of wildlife conservation.

These final regulations reflect Board review and consideration of Regional Council recommendations and public comments. All Board members have reviewed this rule and agree with its substance. Because this rule concerns public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

#### **Conformance With Statutory and Regulatory Authorities**

##### *Administrative Procedure Act Compliance*

The Board has provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act requirements, including participation in multiple Regional Council meetings, additional public review and comment on all proposals for regulatory change, and opportunity for additional public comment during the Board meeting prior to deliberation. Additionally, an administrative mechanism exists (and has been used by the public) to request reconsideration of the Board's decision on any particular proposal for regulatory change. Therefore, we believe that sufficient public notice has been given to affected persons about the Board decisions.

In the more than 18 years the Program has been operating, no benefit to the public has been demonstrated by delaying the effective date of the subsistence regulations. A lapse in regulatory control could affect the continued viability of fish or wildlife populations and future subsistence opportunities for rural Alaskans, and

would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(d)(3) to make this rule effective upon the date set forth in **DATES** to ensure continued operation of the subsistence program.

##### *National Environmental Policy Act Compliance*

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analyses and examined the environmental consequences of four alternatives. Proposed regulations (subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for a regulatory cycle regarding subsistence hunting and fishing regulations (subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comments received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of a regulatory cycle for subsistence hunting and fishing regulations. The final rule for subsistence management regulations for public lands in Alaska, subparts A, B, and C, implemented the Federal Subsistence Management Program and included a framework for a regulatory cycle for the subsistence taking of wildlife and fish. The following **Federal Register** documents pertain to this rulemaking:

SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A, B, AND C: FEDERAL REGISTER DOCUMENTS PERTAINING TO THE FINAL RULE

Federal Register citation	Date of publication	Category	Details
57 FR 22940 .....	May 29, 1992 .....	Final Rule .....	“Subsistence Management Regulations for Public Lands in Alaska; Final Rule” was published in the <b>Federal Register</b> .
64 FR 1276 .....	January 8, 1999 ....	Final Rule .....	Amended the regulations to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. Extended the Federal Subsistence Board’s management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or to an Alaska Native Corporation. Specified and clarified the Secretaries’ authority to determine when hunting, fishing, or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority.
66 FR 31533 .....	June 12, 2001 .....	Interim Rule .....	Expanded the authority that the Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings.
67 FR 30559 .....	May 7, 2002 .....	Final Rule .....	Amended the operating regulations in response to comments on the June 12, 2001, interim rule. Also corrected some inadvertent errors and oversights of previous rules.
68 FR 7703 .....	February 18, 2003	Direct Final Rule ...	Clarified how old a person must be to receive certain subsistence use permits and removed the requirement that Regional Councils must have an odd number of members.
68 FR 23035 .....	April 30, 2003 .....	Affirmation of Direct Final Rule.	Because no adverse comments were received on the direct final rule (67 FR 30559), the direct final rule was adopted.
69 FR 60957 .....	October 14, 2004 ..	Final Rule .....	Clarified the membership qualifications for Regional Advisory Council membership and relocated the definition of “regulatory year” from subpart A to subpart D of the regulations.
70 FR 76400 .....	December 27, 2005.	Final Rule .....	Revised jurisdiction in marine waters and clarified jurisdiction relative to military lands.
71 FR 49997 .....	August 24, 2006 ...	Final Rule .....	Revised the jurisdiction of the subsistence program by adding submerged lands and waters in the area of Makhnati Island, near Sitka, AK. This allowed subsistence users to harvest marine resources in this area under seasons, harvest limits, and methods specified in the regulations.
72 FR 25688 .....	May 7, 2007 .....	Final Rule .....	Revised nonrural determinations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available from the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

*Compliance With Section 810 of ANILCA*

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts

on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

*Paperwork Reduction Act*

This rule does not contain any new information collection requirements that need Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule applies to the use of public lands in Alaska. The information collection requirements described in this rule are already approved by OMB and have been assigned control number 1018–0075, which expires October 31, 2009. We may not conduct or sponsor and you are not required to respond to a collection of information request unless it displays a currently valid OMB control number.

*Other Requirements*

**Economic Effects**—The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies’ actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq. ) requires preparation of regulatory flexibility analyses for rules that will have a significant economic effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities

within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as sporting goods, ammunition, and gasoline dealers. The number of small entities affected is unknown; however, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that the effects will not be significant.

This rule benefits those participants who engage in the subsistence harvest of fish and wildlife in Alaska in two identifiable ways: First, participants get the consumptive value of the food harvested, and second, participants get the cultural benefit associated with the maintenance of a subsistence lifestyle. We can estimate the consumptive value for fish and wildlife harvested under this rule but can place no dollar value on the maintenance of a subsistence lifestyle. However, we estimate that 8.7 million pounds of wildlife are harvested by the local subsistence users annually and, if based on a replacement value of \$5.00 per pound, would equate to \$43.5 million in food value Statewide. The cultural benefits of maintaining a subsistence lifestyle can also be of considerable value to the participants.

*Executive Order 12630*

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential implications for takings of private property as defined by Executive Order 12630.

*Unfunded Mandates Reform Act*

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The

implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

*Executive Order 12988*

The Service has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

*Executive Order 13132*

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless the State's program is compliant with the requirements of that title.

*Relations With Native American Tribal Governments*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), 512 DM 2, and E.O. 13175, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no significant direct effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

*Executive Order 13211*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, no Statement of Energy Effects is required.

Drafting Information—Theo Matuskowitz drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by

- Elijah Waters, Alaska State Office, Bureau of Land Management;
- Sandy Rabinowitch, Alaska Regional Office, National Park Service;
- Dr. Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg and Carl Jack, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Steve Kessler, Alaska Regional Office, U.S. Forest Service.

**List of Subjects**

*36 CFR Part 242*

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

*50 CFR Part 100*

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

**Regulation Promulgation**

■ For the reasons set out in the preamble, the Federal Subsistence Board amends title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

**PART —SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA**

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

**Authority:** 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

**Subpart C—Board Determinations**

■ 2. In subpart C of 36 CFR part 242 and 50 CFR part 100, § .24(a)(1) is revised to read as follows:

**§ .24 Customary and traditional use determinations.**

(a) \* \* \*

(1) *Wildlife determinations.* The rural Alaska residents of the listed communities and areas have a customary and traditional use of the specified species on Federal public lands within the listed areas:

Area	Species	Determination
Unit 1C .....	Black Bear .....	Residents of Unit 1C, 1D, 3, Hoonah, Pelican, Point Baker, Sitka, and Tenakee Springs.
Unit 1A .....	Brown Bear .....	Residents of Unit 1A, except no subsistence for residents of Hyder.
Unit 1B .....	Brown Bear .....	Residents of Unit 1A, Petersburg, and Wrangell, except no subsistence for residents of Hyder.
Unit 1C .....	Brown Bear .....	Residents of Unit 1C, Haines, Hoonah, Kake, Klukwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus.
Unit 1D .....	Brown Bear .....	Residents of 1D.



Area	Species	Determination
Unit 1A .....	Deer .....	Residents of Units 1A and 2.
Unit 1B .....	Deer .....	Residents of Units 1A, 1B, 2, and 3.
Unit 1C .....	Deer .....	Residents of 1C, 1D, Hoonah, Kake, and Petersburg.
Unit 1D .....	Deer .....	No Federal subsistence priority.
Unit 1B .....	Goat .....	Residents of Units 1B and 3.
Unit 1C .....	Goat .....	Residents of Haines, Kake, Klukwan, Petersburg, and Hoonah.
Unit 1B .....	Moose .....	Residents of Units 1, 2, 3, and 4.
Unit 1C Berners Bay .....	Moose .....	No Federal subsistence priority.
Unit 1D .....	Moose .....	Residents of Unit 1D.
Unit 2 .....	Deer .....	Residents of Unit 1A, 2, and 3.
Unit 3 .....	Deer .....	Residents of Unit 1B, 3, Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
Unit 3, Wrangell and Mitkof Islands .....	Moose .....	Residents of Units 1B, 2, and 3.
Unit 4 .....	Brown Bear .....	Residents of Unit 4 and Kake.
Unit 4 .....	Deer .....	Residents of Unit 4, Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell, and Yakutat.
Unit 4 .....	Goat .....	Residents of Sitka, Hoonah, Tenakee, Pelican, Funter Bay, Angoon, Port Alexander, and Elfin Cove.
Unit 5 .....	Black Bear .....	Residents of Unit 5A.
Unit 5 .....	Brown Bear .....	Residents of Yakutat.
Unit 5 .....	Deer .....	Residents of Yakutat.
Unit 5 .....	Goat .....	Residents of Unit 5A.
Unit 5 .....	Moose .....	Residents of Unit 5A.
Unit 5 .....	Wolf .....	Residents of Unit 5A.
Unit 6A .....	Black Bear .....	Residents of Yakutat and Unit 6C and 6D, except no subsistence for Whittier.
Unit 6, remainder .....	Black Bear .....	Residents of Unit 6C and 6D, except no subsistence for Whittier.
Unit 6 .....	Brown Bear .....	No Federal subsistence priority.
Unit 6A .....	Goat .....	Residents of Unit 5A, 6C, Chenega Bay, and Tatitlek.
Unit 6C and Unit 6D .....	Goat .....	Residents of Unit 6C and D.
Unit 6A .....	Moose .....	Residents of Units 5A, 6A, 6B and 6C.
Unit 6B and Unit 6C .....	Moose .....	Residents of Units 6A, 6B and 6C.
Unit 6D .....	Moose .....	No Federal subsistence priority.
Unit 6A .....	Wolf .....	Residents of Units 5A, 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 6, remainder .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 7 .....	Brown Bear .....	No Federal subsistence priority.
Unit 7 .....	Caribou .....	No Federal subsistence priority.
Unit 7, Brown Mountain hunt area .....	Goat .....	Residents of Port Graham and Nanwalek.
Unit 7, that portion draining into Kings Bay .....	Moose .....	Residents of Chenega Bay, Cooper Landing, and Tatitlek.
Unit 7, remainder .....	Moose .....	Residents of Cooper Landing.
Unit 7 .....	Sheep .....	No Federal subsistence priority.
Unit 7 .....	Ruffed Grouse .....	No Federal subsistence priority.
Unit 8 .....	Brown Bear .....	Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions.
Unit 8 .....	Deer .....	Residents of Unit 8.
Unit 8 .....	Elk .....	Residents of Unit 8.
Unit 8 .....	Goat .....	No Federal subsistence priority.
Unit 9D .....	Bison .....	No Federal subsistence priority.
Unit 9A and Unit 9B .....	Black Bear .....	Residents of Units 9A, 9B, 17A, 17B, and 17C.
Unit 9A .....	Brown Bear .....	Residents of Pedro Bay.
Unit 9B .....	Brown Bear .....	Residents of Unit 9B.
Unit 9C .....	Brown Bear .....	Residents of Unit 9C, Igiugig, Kakhonak, and Levelock.
Unit 9D .....	Brown Bear .....	Residents of Units 9D and 10 (Unimak Island).
Unit 9E .....	Brown Bear .....	Residents of Chignik, Chignik Lagoon, Chignik Lake, Egegik, Ivanof Bay, Perryville, Pilot Point, Ugashik, and Port Heiden/Meshik.
Unit 9A and Unit 9B .....	Caribou .....	Residents of Units 9B, 9C, and 17.
Unit 9C .....	Caribou .....	Residents of Unit 9B, 9C, 17, and Egegik.
Unit 9D .....	Caribou .....	Residents of Unit 9D, Akutan, and False Pass.
Unit 9E .....	Caribou .....	Residents of Units 9B, 9C, 9E, 17, Nelson Lagoon and Sand Point.
Unit 9A, Unit 9B, Unit 9C and Unit 9E .....	Moose .....	Residents of Unit 9A, 9B, 9C, and 9E.
Unit 9D .....	Moose .....	Residents of Cold Bay, False Pass, King Cove, Nelson Lagoon, and Sand Point.
Unit 9B .....	Sheep .....	Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, Port Alsworth, and residents of Lake Clark National Park and Preserve within Unit 9B.
Unit 9, remainder .....	Sheep .....	No determination.
Unit 9 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 9A, Unit B, Unit C, & Unit E .....	Beaver .....	Residents of Units 9A, 9B, 9C, 9E, and 17.
Unit 10 Unimak Island .....	Brown Bear .....	Residents of Units 9D and 10 (Unimak Island).
Unit 10 Unimak Island .....	Caribou .....	Residents of Akutan, False Pass, King Cove, and Sand Point.
Unit 10, remainder .....	Caribou .....	No determination.

Area	Species	Determination
Unit 10 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 11 .....	Bison .....	No Federal subsistence priority.
Unit 11, north of the Sanford River .....	Black Bear .....	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Units 11 and 12.
Unit 11, remainder .....	Black Bear .....	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Unit 11.
Unit 11, north of the Sanford River .....	Brown Bear .....	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Units 11 and 12.
Unit 11, remainder .....	Brown Bear .....	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Unit 11.
Unit 11, north of the Sanford River .....	Caribou .....	Residents of Units 11, 12, 13A–D, Chickaloon, Healy Lake, and Dot Lake.
Unit 11, remainder .....	Caribou .....	Residents of Units 11, 13A–D, and Chickaloon.
Unit 11 .....	Goat .....	Residents of Unit 11, Chitina, Chistochina, Copper Center, Gakona, Glennallen, Gulkana, Mentasta Lake, Slana, Tazlina, Tonsina, and Dot Lake.
Unit 11, north of the Sanford River .....	Moose .....	Residents of Units 11, 12, 13A–D, Chickaloon, Healy Lake, and Dot Lake.
Unit 11, remainder .....	Moose .....	Residents of Units 11, 13A–D, and Chickaloon.
Unit 11, north of the Sanford River .....	Sheep .....	Residents of Unit 12, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Healy Lake, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina, Tonsina, residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
Unit 11, remainder .....	Sheep .....	Residents of Chisana, Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina, Tonsina, residents along the Tok Cutoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
Unit 11 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 11 .....	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20D, 22 and 23.
Unit 11 .....	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20D, 22 and 23.
Unit 12 .....	Brown Bear .....	Residents of Unit 12, Dot Lake, Chistochina, Gakona, Mentasta Lake, and Slana.
Unit 12 .....	Caribou .....	Residents of Unit 12, Dot Lake, Healy Lake, and Mentasta Lake.
Unit 12, that portion within the Tetlin National Wildlife Refuge and those lands within the Wrangell-St. Elias National Preserve north and east of a line formed by the Pickerel Lake Winter Trail from the Canadian border to Pickerel Lake.	Moose .....	Residents of Unit 12, 13C, Dot Lake, and Healy Lake.
Unit 12, that portion east of the Nabesna River and Nabesna Glacier, and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border.	Moose .....	Residents of Unit 12, 13C, and Healy Lake.
Unit 12, remainder .....	Moose .....	Residents of Unit 11 north of 62nd parallel, Unit 12, 13A–D and the residents of Chickaloon, Dot Lake, and Healy Lake.
Unit 12 .....	Sheep .....	Residents of Unit 12, Chistochina, Dot Lake, Healy Lake, and Mentasta Lake.
Unit 12 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 13 .....	Brown Bear .....	Residents of Unit 13 and Slana.
Unit 13B .....	Caribou .....	Residents of Units 11, 12 (along the Nabesna Road), 13, residents of Unit 20D except Fort Greely, and the residents of Chickaloon.
Unit 13C .....	Caribou .....	Residents of Units 11, 12 (along the Nabesna Road), 13, Chickaloon, Dot Lake and Healy Lake.
Unit 13A and Unit 13D .....	Caribou .....	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon.
Unit 13E .....	Caribou .....	Residents of Units 11, 12 (along the Nabesna Road), 13, Chickaloon, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
Unit 13D .....	Goat .....	No Federal subsistence priority.
Unit 13A and Unit 13D .....	Moose .....	Residents of Unit 13, Chickaloon, and Slana.
Unit 13B .....	Moose .....	Residents of Units 13, 20D except Fort Greely, and the residents of Chickaloon and Slana.

Area	Species	Determination
Unit 13C .....	Moose .....	Residents of Units 12, 13, and the residents of Chickaloon, Healy Lake, Dot Lake and Slana.
Unit 13E .....	Moose .....	Residents of Unit 13, Chickaloon, McKinley Village, Slana, and the area along the Parks Highway between mileposts 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
Unit 13D .....	Sheep .....	No Federal subsistence priority.
Unit 13 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 13 .....	Grouse (Spruce, Blue, Ruffed & Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22 & 23.
Unit 13 .....	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22 & 23.
Unit 14C .....	Brown Bear .....	No Federal subsistence priority.
Unit 14 .....	Goat .....	No Federal subsistence priority.
Unit 14 .....	Moose .....	No Federal subsistence priority.
Unit 14A and Unit 14C .....	Sheep .....	No Federal subsistence priority.
Unit 15A and Unit 15B .....	Black Bear .....	Residents of Ninilchik.
Unit 15C .....	Black Bear .....	Residents of Ninilchik, Port Graham, and Nanwalek.
Unit 15C .....	Brown Bear .....	Residents of Ninilchik.
Unit 15, remainder .....	Brown Bear .....	No Federal subsistence priority.
Unit 15A and Unit 15B .....	Moose .....	Residents of Cooper Landing, Ninilchik, Nanwalek, Port Graham, and Seldovia.
Unit 15C .....	Moose .....	Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia.
Unit 15 .....	Sheep .....	No Federal subsistence priority.
Unit 15 .....	Ptarmigan (Rock, Willow and White-tailed).	Residents of Unit 15.
Unit 15 .....	Grouse (Spruce) ....	Residents of Unit 15.
Unit 15 .....	Grouse (Ruffed) ....	No Federal subsistence priority.
Unit 16B .....	Black Bear .....	Residents of Unit 16B.
Unit 16 .....	Brown Bear .....	No Federal subsistence priority.
Unit 16A .....	Moose .....	No Federal subsistence priority.
Unit 16B .....	Moose .....	Residents of Unit 16B.
Unit 16 .....	Sheep .....	No Federal subsistence priority.
Unit 16 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 16 .....	Grouse (Spruce and Ruffed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22 and 23.
Unit 16 .....	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22 and 23.
Unit 17A and that portion of 17B draining into Nuyakuk Lake and Tikchik Lake.	Black Bear .....	Residents of Units 9A and B, 17, Akiak, and Akiachak.
Unit 17, remainder .....	Black Bear .....	Residents of Units 9A and B, and 17.
Unit 17A and Unit 17B, those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Brown Bear .....	Residents of Unit 17, Akiak, Akiachak, Goodnews Bay, and Platinum.
Unit 17A, remainder .....	Brown Bear .....	Residents of Akiak and Akiachak.
Unit 17B, that portion draining into Nuyakuk Lake and Tikchik Lake.	Brown Bear .....	Residents of Unit 17.
Unit 17B and Unit 17C .....	Caribou .....	Residents of Goodnews Bay, Platinum, Quinhagak, Eek, Tuntutuliak, and Napakiak.
Unit 17A, that portion west of the Izavieknik River, Upper Togiak Lake, Togiak Lake, and the main course of the Togiak River.	Caribou .....	Residents of Akiak, Akiachak, and Tuluksak.
Unit 17A, that portion north of Togiak Lake that includes Izavieknik River drainages.	Caribou .....	Residents of Akiak, Akiachak, and Tuluksak.
Unit 17A and 17B, those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Caribou .....	Residents of Kwethluk.

Area	Species	Determination
Unit 17B, that portion of Togiak National Wildlife Refuge within Unit 17B.	Caribou .....	Residents of Bethel, Goodnews Bay, Platinum, Quinhagak, Eek, Akiak, Akiachak, Tuluksak, Tuntutuliak, and Napakiak.
Unit 17, remainder .....	Caribou .....	Residents of Units 9B, 17, Lime Village, and Stony River.
Unit 17A and 17B, those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Moose .....	Residents of Kwethluk.
Unit 17A, that portion north of Togiak Lake that includes Izavieknik River drainages.	Moose .....	Residents of Akiak, Akiachak.
Unit 17A, remainder .....	Moose .....	Residents of Unit 17, Goodnews Bay and Platinum; however, no subsistence for residents of Akiachak, Akiak and Quinhagak.
Unit 17B, that portion within the Togiak National Wildlife Refuge.	Moose .....	Residents of Akiak, Akiachak.
Unit 17B, remainder and Unit 17C .....	Moose .....	Residents of Unit 17, Nondalton, Levelock, Goodnews Bay, and Platinum.
Unit 17 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 17 .....	Beaver .....	Residents of Units 9A, 9B, 9C, 9E, and 17.
Unit 18 .....	Black Bear .....	Residents of Unit 18, Unit 19A living downstream of the Holokuk River, Holy Cross, Stebbins, St. Michael, Twin Hills, and Togiak.
Unit 18 .....	Brown Bear .....	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Marys, and Tuluksak.
Unit 18 .....	Caribou .....	Residents of Unit 18, Manokotak, Stebbins, St. Michael, Togiak, Twin Hills, and Upper Kalskag.
Unit 18, that portion of the Yukon River drainage upstream of Russian Mission and that portion of the Kuskokwim River drainage upstream of, but not including, the Tuluksak River drainage.	Moose .....	Residents of Unit 18, Upper Kalskag, Aniak, and Chuathbaluk.
Unit 18, that portion north of a line from Cape Romanzof to Kusilvak Mountain to Mountain Village, and all drainages north of the Yukon River downstream from Marshall.	Moose .....	Residents of Unit 18, St. Michael, Stebbins, and Upper Kalskag.
Unit 18, remainder .....	Moose .....	Residents of Unit 18 and Upper Kalskag.
Unit 18 .....	Musk ox .....	No Federal subsistence priority.
Unit 18 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 19C and Unit 19D .....	Bison .....	No Federal subsistence priority.
Unit 19A and Unit 19B .....	Brown Bear .....	Residents of Units 19 and 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River.
Unit 19C .....	Brown Bear .....	No Federal subsistence priority.
Unit 19D .....	Brown Bear .....	Residents of Units 19A and D, Tuluksak and Lower Kalskag.
Unit 19A and Unit 19B .....	Caribou .....	Residents of Units 19A and 19B, Unit 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River, and residents of St. Marys, Marshall, Pilot Station, Russian Mission.
Unit 19C .....	Caribou .....	Residents of Unit 19C, Lime Village, McGrath, Nikolai, and Telida.
Unit 19D .....	Caribou .....	Residents of Unit 19D, Lime Village, Sleetmute, and Stony River.
Unit 19A and Unit 9B .....	Moose .....	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and residents of Unit 19.
Unit 19B, west of the Kogrukuk River .....	Moose .....	Residents of Eek and Quinhagak.
Unit 19C .....	Moose .....	Residents of Unit 19.
Unit 19D .....	Moose .....	Residents of Unit 19 and Lake Minchumina.
Unit 19 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 20D .....	Bison .....	No Federal subsistence priority.
Unit 20F .....	Black Bear .....	Residents of Unit 20F, Stevens Village, and Manley.
Unit 20E .....	Brown Bear .....	Residents of Unit 12 and Dot Lake.
Unit 20F .....	Brown Bear .....	Residents of Unit 20F, Stevens Village, and Manley.
Unit 20A .....	Caribou .....	Residents of Cantwell, Nenana, and those domiciled between mileposts 216 and 239 of the Parks Highway. No subsistence priority for residents of households of the Denali National Park Headquarters.
Unit 20B .....	Caribou .....	Residents of Unit 20B, Nenana, and Tanana.
Unit 20C .....	Caribou .....	Residents of Unit 20C living east of the Teklanika River, residents of Cantwell, Lake Minchumina, Manley Hot Springs, Minto, Nenana, Nikolai, Tanana, Talida, and those domiciled between mileposts 216 and 239 of the Parks Highway and between mileposts 300 and 309. No subsistence priority for residents of households of the Denali National Park Headquarters.

Area	Species	Determination
Unit 20D and Unit 20E .....	Caribou .....	Residents of 20D, 20E, and Unit 12 north of the Wrangell-St. Elias National Park and Preserve.
Unit 20F .....	Caribou .....	Residents of 20F, 25D, and Manley.
Unit 20A .....	Moose .....	Residents of Cantwell, Minto, Nenana, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters.
Unit 20B, Minto Flats Management Area	Moose .....	Residents of Minto and Nenana.
Unit 20B, remainder .....	Moose .....	Residents of Unit 20B, Nenana, and Tanana.
Unit 20C .....	Moose .....	Residents of Unit 20C (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), Cantwell, "Manley", Minto, Nenana, those domiciled between mileposts 300 and 309 of the Parks Highway, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239. No subsistence for residents of households of the Denali National Park Headquarters.
Unit 20D .....	Moose .....	Residents of Unit 20D and residents of Tanacross.
Unit 20E .....	Moose .....	Residents of Unit 20E, Unit 12 north of the Wrangell-St. Elias National Preserve, Circle, Central, Dot Lake, Healy Lake, and Mentasta Lake.
Unit 20F .....	Moose .....	Residents of Unit 20F, "Manley", Minto, and Stevens Village.
Unit 20F .....	Wolf .....	Residents of Unit 20F, Stevens Village, and "Manley".
Unit 20, remainder .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 20D .....	Grouse (Spruce, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22, and 23.
Unit 20D .....	Ptarmigan (Rock and Willow).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22, and 23.
Unit 21 .....	Brown Bear .....	Residents of Units 21 and 23.
Unit 21A .....	Caribou .....	Residents of Units 21A, 21D, 21E, Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
Unit 21B and Unit 21C .....	Caribou .....	Residents of Units 21B, 21C, 21D, and Tanana.
Unit 21D .....	Caribou .....	Residents of Units 21B, 21C, 21D, and Huslia.
Unit 21E .....	Caribou .....	Residents of Units 21A, 21E, Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
Unit 21A .....	Moose .....	Residents of Units 21A, 21E, Takotna, McGrath, Aniak, and Crooked Creek.
Unit 21B and Unit 21C .....	Moose .....	Residents of Units 21B, 21C, Tanana, Ruby, and Galena.
Unit 21D .....	Moose .....	Residents of Units 21D, Huslia, and Ruby.
Unit 21E .....	Moose .....	Residents of Unit 21E and Russian Mission.
Unit 21 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 22A .....	Black Bear .....	Residents of Unit 22A and Koyuk.
Unit 22B .....	Black Bear .....	Residents of Unit 22B.
Unit 22C, Unit 22D, and Unit 22E .....	Black Bear .....	No Federal subsistence priority.
Unit 22 .....	Brown Bear .....	Residents of Unit 22.
Unit 22A .....	Caribou .....	Residents of Unit 21D west of the Koyukuk and Yukon Rivers, 22 (except residents of St. Lawrence Island), 23, 24, Kotlik, Emmonak, Hooper Bay, Scammon Bay, Chevak, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Marys, Nunam Iqua, and Alakanuk.
Unit 22, remainder .....	Caribou .....	Residents of Unit 21D west of the Koyukuk and Yukon Rivers, 22 (except residents of St. Lawrence Island), 23, and 24.
Unit 22 .....	Moose .....	Residents of Unit 22.
Unit 22B, west of the Darby Mountains ...	Musk ox .....	Residents of Unit 22B and 22C.
Unit 22B, remainder .....	Musk ox .....	Residents of Unit 22B.
Unit 22C .....	Musk ox .....	Residents of Unit 22C.
Unit 22D, that portion within the Kougarak, Kuzitrin, and Pilgrim River drainages.	Musk ox .....	Residents of Unit 22C, White Mountain, and Unit 22D excluding St. Lawrence Island.
Unit 22D, remainder .....	Musk ox .....	Residents of Unit 22D excluding St. Lawrence Island.
Unit 22E .....	Musk ox .....	Residents of Unit 22E excluding Little Diomed Island.
Unit 22 .....	Wolf .....	Residents of Units 23, 22, 21D north and west of the Yukon River, and Kotlik.
Unit 22 .....	Grouse (Spruce) ...	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22, and 23.
Unit 22 .....	Ptarmigan (Rock and Willow).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22, and 23.
Unit 23 .....	Black Bear .....	Residents of Unit 23, Alatna, Allakaket, Bettles, Evansville, Galena, Hughes, Huslia, and Koyukuk.
Unit 23 .....	Brown Bear .....	Residents of Units 21 and 23.
Unit 23 .....	Caribou .....	Residents of Unit 21D west of the Koyukuk and Yukon Rivers, Galena, 22, 23, 24 including residents of Wiseman but not including other residents of the Dalton Highway Corridor Management Area, and 26A.
Unit 23 .....	Moose .....	Residents of Unit 23.
Unit 23, south of Kotzebue Sound and west of and including the Buckland River drainage.	Musk ox .....	Residents of Unit 23 south of Kotzebue Sound and west of and including the Buckland River drainage.
Unit 23, remainder .....	Musk ox .....	Residents of Unit 23 east and north of the Buckland River drainage.

Area	Species	Determination
Unit 23 .....	Sheep .....	Residents of Point Lay and Unit 23 north of the Arctic Circle.
Unit 23 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 23 .....	Grouse (Spruce and Ruffed) .....	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22, and 23.
Unit 23 .....	Ptarmigan (Rock, Willow and White-tailed) .....	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22, and 23.
Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Black Bear .....	Residents of Stevens Village, Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
Unit 24, remainder .....	Black Bear .....	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Brown Bear .....	Residents of Stevens Village and residents of Unit 24.
Unit 24, remainder .....	Brown Bear .....	Residents of Unit 24.
Unit 24 .....	Caribou .....	Residents of Unit 24, Galena, Kobuk, Koyukuk, Stevens Village, and Tanana.
Unit 24 .....	Moose .....	Residents of Unit 24, Koyukuk, and Galena.
Unit 24 .....	Sheep .....	Residents of Unit 24 residing north of the Arctic Circle, Allakaket, Alatna, Hughes, and Huslia.
Unit 24 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 25D .....	Black Bear .....	Residents of Unit 25D.
Unit 25D .....	Brown Bear .....	Residents of Unit 25D.
Unit 25, remainder .....	Brown Bear .....	Residents of Unit 25 and Eagle.
Unit 25D .....	Caribou .....	Residents of 20F, 25D, and Manley.
Unit 25A .....	Moose .....	Residents of Units 25A and 25D.
Unit 25D, west .....	Moose .....	Residents of Unit 25D West.
Unit 25D, remainder .....	Moose .....	Residents of remainder of Unit 25.
Unit 25A .....	Sheep .....	Residents of Arctic Village, Chalkyitsik, Fort Yukon, Kaktovik, and Venetie.
Unit 25B and Unit 25C .....	Sheep .....	No Federal subsistence priority.
Unit 25D .....	Wolf .....	Residents of Unit 25D.
Unit 25, remainder .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 26 .....	Brown Bear .....	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex), Anaktuvuk Pass, and Point Hope.
Unit 26A and C .....	Caribou .....	Residents of Unit 26, Anaktuvuk Pass, and Point Hope.
Unit 26B .....	Caribou .....	Residents of Unit 26, Anaktuvuk Pass, Point Hope, and residents of Unit 24 within the Dalton Highway Corridor Management Area.
Unit 26 .....	Moose .....	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex), Point Hope, and Anaktuvuk Pass.
Unit 26A .....	Musk ox .....	Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.
Unit 26B .....	Musk ox .....	Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.
Unit 26C .....	Musk ox .....	Residents of Kaktovik.
Unit 26A .....	Sheep .....	Residents of Unit 26, Anaktuvuk Pass, and Point Hope.
Unit 26B .....	Sheep .....	Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman.
Unit 26C .....	Sheep .....	Residents of Unit 26, Anaktuvuk Pass, Arctic Village, Chalkyitsik, Fort Yukon, Point Hope, and Venetie.
Unit 26 .....	Wolf .....	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.

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**Subpart D—Subsistence Taking of Fish and Wildlife**

■ 3. In subpart D of 36 CFR part 242 and 50 CFR part 100, § \_\_.25 is revised to read as follows:

**§ \_\_.25 Subsistence taking of fish, wildlife, and shellfish: general regulations.**

(a) *Definitions.* The following definitions apply to all regulations contained in this part:

*Abalone iron* means a flat device which is used for taking abalone and which is more than 1 inch (24 mm) in width and less than 24 inches (610 mm) in length, with all prying edges rounded and smooth.

*ADF&G* means the Alaska Department of Fish and Game.

*Airborne* means transported by aircraft.

*Aircraft* means any kind of airplane, glider, or other device used to transport

people or equipment through the air, excluding helicopters.

*Airport* means an airport listed in the Federal Aviation Administration's Alaska Airman's Guide and chart supplement.

*Anchor* means a device used to hold a fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor, or being secured to another vessel or net that is anchored.

*Animal* means those species with a vertebral column (backbone).

*Antler* means one or more solid, horn-like appendages protruding from the head of a caribou, deer, elk, or moose.

*Antlered* means any caribou, deer, elk, or moose having at least one visible antler.

*Antlerless* means any caribou, deer, elk, or moose not having visible antlers attached to the skull.

*Bait* means any material excluding a scent lure that is placed to attract an animal by its sense of smell or taste; however, those parts of legally taken animals that are not required to be salvaged and which are left at the kill site are not considered bait.

*Beach seine* means a floating net which is designed to surround fish and is set from and hauled to the beach.

*Bear* means black bear, or brown or grizzly bear.

*Big game* means black bear, brown bear, bison, caribou, Sitka black-tailed deer, elk, mountain goat, moose, musk ox, Dall sheep, wolf, and wolverine.

*Bow* means a longbow, recurve bow, or compound bow, excluding a crossbow or any bow equipped with a mechanical device that holds arrows at full draw.

*Broadhead* means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eighths of an inch.

*Brow tine* means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

*Buck* means any male deer.

*Bull* means any male moose, caribou, elk, or musk oxen.

*Calf* means a moose, caribou, elk, musk ox, or bison less than 12 months old.

*Cast net* means a circular net with a mesh size of no more than 1½ inches and weights attached to the perimeter, which, when thrown, surrounds the fish and closes at the bottom when retrieved.

*Char* means the following species: Arctic char (*Salvelinus alpinis*), lake trout (*Salvelinus namaycush*), brook trout (*Salvelinus fontinalis*), and Dolly Varden (*Salvelinus malma*).

*Closed season* means the time when fish, wildlife, or shellfish may not be taken.

*Crab* means the following species: red king crab (*Paralithodes camshatica*), blue king crab (*Paralithodes platypus*), brown king crab (*Lithodes aequispina*), scarlet king crab (*Lithodes couesi*), all species of tanner or snow crab (*Chionoecetes spp.*), and Dungeness crab (*Cancer magister*).

*Cub bear* means a brown or grizzly bear in its first or second year of life, or

a black bear (including cinnamon and blue phases) in its first year of life.

*Depth of net* means the perpendicular distance between cork line and lead line expressed as either linear units of measure or as a number of meshes, including all of the web of which the net is composed.

*Designated hunter or fisherman* means a Federally qualified hunter or fisherman who may take all or a portion of another Federally qualified hunter's or fisherman's harvest limit(s) only under situations approved by the Board.

*Dip net* means a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed 5 feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

*Diving gear* means any type of hard hat or skin diving equipment, including SCUBA equipment; a tethered, umbilical, surface-supplied unit; or snorkel.

*Drainage* means all of the lands and waters comprising a watershed, including tributary rivers, streams, sloughs, ponds, and lakes, which contribute to the water supply of the watershed.

*Drift gillnet* means a drifting gillnet that has not been intentionally staked, anchored, or otherwise fixed in one place.

*Edible meat* means the breast meat of ptarmigan and grouse, and, those parts of caribou, deer, elk, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption, which are: the meat of the ribs, neck, brisket, front quarters as far as the distal (bottom) joint of the radius-ulna (knee), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; however, *edible meat* of species listed in this definition does not include: Meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera. For black bear, brown and grizzly bear, "edible meat" means the meat of the front quarter and hindquarters and meat along the backbone (backstrap).

*Federally qualified subsistence user* means a rural Alaska resident qualified

to harvest fish or wildlife on Federal public lands in accordance with the Federal Subsistence Management Regulations in this part.

*Field* means an area outside of established year-round dwellings, businesses, or other developments usually associated with a city, town, or village; *field* does not include permanent hotels or roadhouses on the State road system or at State or Federally maintained airports.

*Fifty-inch (50-inch) moose* means a bull moose with an antler spread of 50 inches or more.

*Fish wheel* means a fixed, rotating device, with no more than four baskets on a single axle, for catching fish, which is driven by river current or other means.

*Fresh water of streams and rivers* means the line at which fresh water is separated from salt water at the mouth of streams and rivers by a line drawn headland to headland across the mouth as the waters flow into the sea.

*Full curl horn* means the horn of a Dall sheep ram, the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

*Furbearer* means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf, or wolverine.

*Fyke net* means a fixed, funneling (fyke) device used to entrap fish.

*Gear* means any type of fishing apparatus.

*Gillnet* means a net primarily designed to catch fish by entanglement in a mesh that consists of a single sheet of webbing which hangs between cork line and lead line, and which is fished from the surface of the water.

*Grappling hook* means a hooked device with flukes or claws, which is attached to a line and operated by hand.

*Groundfish* or *bottomfish* means any marine fish except halibut, osmerids, herring and salmonids.

*Grouse* collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, blue grouse, and sharp-tailed grouse.

*Hand purse seine* means a floating net which is designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

*Handicraft* means a finished product made by a rural Alaskan resident from the nonedible byproducts of fish or

wildlife and is composed wholly or in some significant respect of natural materials. The shape and appearance of the natural material must be substantially changed by the skillful use of hands, such as sewing, weaving, drilling, lacing, beading, carving, etching, scrimshawing, painting, or other means, and incorporated into a work of art, regalia, clothing, or other creative expression, and can be either traditional or contemporary in design. The handicraft must have substantially greater monetary and aesthetic value than the unaltered natural material alone.

*Handline* means a hand-held and operated line, with one or more hooks attached.

*Hare or hares* collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

*Harvest limit* means the number of any one species permitted to be taken by any one person or designated group, per specified time period, in a Unit or portion of a Unit in which the taking occurs even if part or all of the harvest is preserved. A fish, when landed and killed by means of rod and reel, becomes part of the harvest limit of the person originally hooking it.

*Herring pound* means an enclosure used primarily to contain live herring over extended periods of time.

*Highway* means the drivable surface of any constructed road.

*Household* means that group of people residing in the same residence.

*Hung measure* means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

*Hunting* means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

*Hydraulic clam digger* means a device using water or a combination of air and water used to harvest clams.

*Jigging gear* means a line or lines with lures or baited hooks, drawn through the water by hand, and which are operated during periods of ice cover from holes cut in the ice, or from shore ice and which are drawn through the water by hand.

*Lead* means either a length of net employed for guiding fish into a seine, set gillnet, or other length of net, or a length of fencing employed for guiding fish into a fish wheel, fyke net, or dip net.

*Legal limit of fishing gear* means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of

boats in any particular regulatory area, district, or section.

*Long line* means either a stationary, buoyed, or anchored line, or a floating, free-drifting line with lures or baited hooks attached.

*Marmot* collectively refers to all species of marmot that occur in Alaska, including the hoary marmot, Alaska marmot, and the woodchuck.

*Mechanical clam digger* means a mechanical device used or capable of being used for the taking of clams.

*Mechanical jigging machine* means a mechanical device with line and hooks used to jig for halibut and bottomfish, but does not include hand gurdies or rods with reels.

*Mile* means a nautical mile when used in reference to marine waters or a statute mile when used in reference to fresh water.

*Motorized vehicle* means a motor-driven land, air, or water conveyance.

*Open season* means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

*Otter* means river or land otter only, excluding sea otter.

*Permit hunt* means a hunt for which State or Federal permits are issued by registration or other means.

*Poison* means any substance that is toxic or poisonous upon contact or ingestion.

*Possession* means having direct physical control of wildlife at a given time or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

*Possession limit* means the maximum number of fish, grouse, or ptarmigan a person or designated group may have in possession if they have not been canned, salted, frozen, smoked, dried, or otherwise preserved so as to be fit for human consumption after a 15-day period.

*Pot* means a portable structure designed and constructed to capture and retain live fish and shellfish in the water.

*Ptarmigan* collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

*Purse seine* means a floating net which is designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

*Ram* means a male Dall sheep.

*Registration permit* means a permit that authorizes hunting and is issued to a person who agrees to the specified

hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order requests are received and/or are based on priorities as determined by 50 CFR 100.17 and 36 CFR 242.17.

*Regulatory year* means July 1–June 30, except for fish and shellfish, for which it means April 1–March 31.

*Ring net* means a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be nonrigid and collapsible so that free movement of fish or shellfish across the top of the net is not prohibited when the net is employed.

*Rockfish* means all species of the genus *Sebastes*.

*Rod and reel* means either a device upon which a line is stored on a fixed or revolving spool and is deployed through guides mounted on a flexible pole, or a line that is attached to a pole. In either case, bait or an artificial fly or lure is used as terminal tackle. This definition does not include the use of rod and reel gear for snagging.

*Salmon* means the following species: pink salmon (*Oncorhynchus gorbuscha*); sockeye salmon (*Oncorhynchus nerka*); Chinook salmon (*Oncorhynchus tshawytscha*); coho salmon (*Oncorhynchus kisutch*); and chum salmon (*Oncorhynchus keta*).

*Salmon stream* means any stream used by salmon for spawning, rearing, or for traveling to a spawning or rearing area.

*Salvage* means to transport the edible meat, skull, or hide, as required by regulation, of a regulated fish, wildlife, or shellfish to the location where the edible meat will be consumed by humans or processed for human consumption in a manner which saves or prevents the edible meat from waste, and preserves the skull or hide for human use.

*Scallop dredge* means a dredge-like device designed specifically for and capable of taking scallops by being towed along the ocean floor.

*Sea urchin rake* means a hand-held implement, no longer than 4 feet, equipped with projecting prongs used to gather sea urchins.

*Sealing* means placing a mark or tag on a portion of a harvested animal by an authorized representative of the ADF&G; *sealing* includes collecting and recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing or



surrendering a specific portion of the animal for biological information.

*Set gillnet* means a gillnet that has been intentionally set, staked, anchored, or otherwise fixed.

*Seven-eighths curl horn* means the horn of a male Dall sheep, the tip of which has grown through seven-eighths (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

*Shovel* means a hand-operated implement for digging clams.

*Skin, hide, pelt, or fur* means any tanned or untanned external covering of an animal's body. However, for bear, the skin, hide, pelt, or fur means the external covering with claws attached.

*Snagging* means hooking or attempting to hook a fish elsewhere than in the mouth.

*Spear* means a shaft with a sharp point or fork-like implement attached to one end, which is used to thrust through the water to impale or retrieve fish, and which is operated by hand.

*Spike-fork moose* means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

*Stretched measure* means the average length of any series of 10 consecutive meshes measured from inside the first knot and including the last knot when wet; the 10 meshes, when being measured, must be an integral part of the net, as hung, and measured perpendicular to the selvages; measurements will be made by means of a metal tape measure while the 10 meshes being measured are suspended vertically from a single peg or nail, under 5-pound weight.

*Subsistence fishing permit* means a subsistence harvest permit issued by the Alaska Department of Fish and Game or the Federal Subsistence Board.

*Take or Taking* means to fish, pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

*Tine or antler point* refers to any point on an antler, the length of which is greater than its width and is at least one inch.

*To operate fishing gear* means any of the following: To deploy gear in the water; to remove gear from the water; to remove fish or shellfish from the gear during an open season or period; or to possess a gillnet containing fish during an open fishing period, except that a gillnet which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

*Transportation* means to ship, convey, carry, or transport by any means

whatever and deliver or receive for such shipment, conveyance, carriage, or transportation.

*Trapping* means the taking of furbearers within established trapping seasons and with a required trapping license.

*Trawl* means a bag-shaped net towed through the water to capture fish or shellfish, and includes beam, otter, or pelagic trawl.

*Troll gear* means a power gurdy troll gear consisting of a line or lines with lures or baited hooks which are drawn through the water by a power gurdy; hand troll gear consisting of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing, or other types of trolling, and which are retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical, or other assisting device or attachment; or dinglebar troll gear consisting of one or more lines, retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.

*Trophy* means a mount of a big game animal, including the skin of the head (cape) or the entire skin, in a lifelike representation of the animal, including a lifelike representation made from any part of a big game animal; "trophy" also includes a "European mount" in which the horns or antlers and the skull or a portion of the skull are mounted for display.

*Trout* means the following species: Cutthroat trout (*Oncorhynchus clarki*) and rainbow/steelhead trout (*Oncorhynchus mykiss*).

*Unclassified wildlife or unclassified species* means all species of animals not otherwise classified by the definitions in this paragraph (a), or regulated under other Federal law as listed in paragraph (i) of this section.

*Ungulate* means any species of hoofed mammal, including deer, caribou, elk, moose, mountain goat, Dall sheep, and musk oxen.

*Unit and Subunit* means one of the geographical areas in the State of Alaska known as Game Management Units, or GMUs, as defined in the codified Alaska Department of Fish and Game regulations found in Title 5 of the Alaska Administrative Code and collectively listed in this part as Units or Subunits.

*Wildlife* means any hare, ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Taking fish, wildlife, or shellfish for subsistence uses by a prohibited method is a violation of this part. Seasons are closed unless opened by Federal regulation. Hunting, trapping, or fishing during a closed season or in an area closed by this part is prohibited. You may not take for subsistence fish, wildlife, or shellfish outside established Unit or Area seasons, or in excess of the established Unit or Area harvest limits, unless otherwise provided for by the Board. You may take fish, wildlife, or shellfish under State regulations on public lands, except as otherwise restricted at §§ .26 through .28. Unit/Area-specific restrictions or allowances for subsistence taking of fish, wildlife, or shellfish are identified at §§ .26 through .28.

(c) *Harvest limits.* (1) Harvest limits authorized by this section and harvest limits established in State regulations may not be accumulated.

(2) Fish, wildlife, or shellfish taken by a designated individual for another person pursuant to § .10(d)(5)(ii) counts toward the individual harvest limit of the person for whom the fish, wildlife, or shellfish is taken.

(3) A harvest limit applies to the number of fish, wildlife, or shellfish that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(4) Unless otherwise provided, any person who gives or receives fish, wildlife, or shellfish must furnish, upon a request made by a Federal or State agent, a signed statement describing the following: Names and addresses of persons who gave and received fish, wildlife, or shellfish; the time and place that the fish, wildlife, or shellfish was taken; and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take fish, wildlife, or shellfish on his or her behalf in accordance with § .10(d)(5)(ii), the permit must be furnished in place of a signed statement.

(d) *Fishing by designated harvest permit.* (1) Any species of fish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally qualified subsistence user, you (beneficiary) may designate another Federally qualified subsistence user to take fish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest fish and must return a completed harvest report. The

designated fisherman may fish for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated fishing permit when taking, attempting to take, or transporting fish taken under this section, on behalf of a beneficiary.

(4) The designated fisherman may not fish with more than one legal limit of gear.

(5) You may not designate more than one person to take or attempt to take fish on your behalf at one time. You may not personally take or attempt to take fish at the same time that a designated fisherman is taking or attempting to take fish on your behalf.

(e) *Hunting by designated harvest permit.* If you are a Federally qualified subsistence user (recipient), you may designate another Federally qualified subsistence user to take deer, moose and caribou on your behalf unless you are a member of a community operating under a community harvest system or unless unit-specific regulations in § .26 preclude or modify the use of the designated hunter system or allow the harvest of additional species by a designated hunter. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time, unless otherwise specified in unit-specific regulations in § .26.

(f) A rural Alaska resident who has been designated to take fish, wildlife, or shellfish on behalf of another rural Alaska resident in accordance with § .10(d)(5)(ii) must promptly deliver the fish, wildlife, or shellfish to that rural Alaska resident and may not charge the recipient for his/her services in taking the fish, wildlife, or shellfish or claim for themselves the meat or any part of the harvested fish, wildlife, or shellfish.

(g) [Reserved].

(h) *Permits.* If a subsistence fishing or hunting permit is required by this part, the following permit conditions apply unless otherwise specified in this section:

(1) You may not take more fish, wildlife, or shellfish for subsistence use than the limits set out in the permit;

(2) You must obtain the permit prior to fishing or hunting;

(3) You must have the permit in your possession and readily available for inspection while fishing, hunting, or transporting subsistence-taken fish, wildlife, or shellfish;

(4) If specified on the permit, you must keep accurate daily records of the harvest, showing the number of fish, wildlife, or shellfish taken, by species, location and date of harvest, and other such information as may be required for management or conservation purposes; and

(5) If the return of harvest information necessary for management and conservation purposes is required by a permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following regulatory year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(i) You may not possess, transport, give, receive, or barter fish, wildlife, or shellfish that was taken in violation of Federal or State statutes or a regulation promulgated hereunder.

(j) *Utilization of fish, wildlife, or shellfish.* (1) You may not use wildlife as food for a dog or furbearer, or as bait, except as allowed for in § .26, § .27, or § .28, or except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse, or ptarmigan; however, you may not use the breast meat of grouse and ptarmigan as animal food or bait;

(iv) Unclassified wildlife.

(2) If you take wildlife for subsistence, you must salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel, or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in Units 5, 9B, 17, 18, portions of 19A and 19B, 21D, 22, 23, 24, and 26A need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares, marmots, beaver, muskrats, or unclassified wildlife.

(3) You must salvage the edible meat of ungulates, bear, grouse, and ptarmigan.

(4) You may not intentionally waste or destroy any subsistence-caught fish or shellfish; however, you may use for bait or other purposes whitefish, herring, and species for which bag limits, seasons, or other regulatory methods and means are not provided in this section, as well as the head, tail, fins, and viscera of legally taken subsistence fish.

(5) Failure to salvage the edible meat may not be a violation if such failure is

caused by circumstances beyond the control of a person, including theft of the harvested fish, wildlife, or shellfish, unanticipated weather conditions, or unavoidable loss to another animal.

(6) If you are a Federally qualified subsistence user, you may sell handicraft articles made from the skin, hide, pelt, or fur, including claws, of a black bear.

(i) In Units 1, 2, 3, 4, and 5, you may sell handicraft articles made from the skin, hide, pelt, fur, claws, bones, teeth, sinew, or skulls of a black bear taken from Units 1, 2, 3, or 5.

(ii) [Reserved].

(7) If you are a Federally qualified subsistence user, you may sell handicraft articles made from the skin, hide, pelt, or fur, including claws, of a brown bear taken from Units 1–5, 9A–C, 9E, 12, 17, 20, 23, 24B (only that portion within Gates of the Arctic National Park), 25, or 26.

(i) In Units 1, 2, 3, 4, and 5, you may sell handicraft articles made from the skin, hide, pelt, fur, claws, bones, teeth, sinew, or skulls of a brown bear taken from Units 1, 4, or 5.

(ii) [Reserved].

(8) If you are a Federally qualified subsistence user, you may sell the raw fur or tanned pelt with or without claws attached from legally harvested furbearers.

(9) If you are a Federally qualified subsistence user, you may sell handicraft articles made from the nonedible byproducts (including, but not limited to, skin, shell, fins, and bones) of subsistence-harvested fish or shellfish.

(10) If you are a Federally qualified subsistence user, you may sell handicraft articles made from nonedible byproducts of wildlife harvested for subsistence uses (excluding bear), to include: Skin, hide, pelt, fur, claws, bones (except skulls of moose, caribou, elk, deer, sheep, goat and musk ox), teeth, sinew, antlers and/or horns (if not attached to any part of the skull or made to represent a big game trophy) and hooves.

(11) The sale of handicrafts made from the nonedible byproducts of wildlife, when authorized in this part, may not constitute a significant commercial enterprise.

(12) You may sell the horns and antlers not attached to any part of the skull from legally harvested caribou (except caribou harvested in Unit 23), deer, elk, goat, moose, musk ox, and sheep.

(13) You may sell the raw/untanned and tanned hide or cape from a legally harvested caribou, deer, elk, goat, moose, musk ox, and sheep.

(k) The regulations found in this part do not apply to the subsistence taking and use of fish, wildlife, or shellfish regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 1091, 16 U.S.C. 1187); the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543); the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407); and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or to any amendments to these Acts. The taking and use of fish, wildlife, or shellfish, covered by these Acts, will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(l) Rural residents, nonrural residents, and nonresidents not specifically prohibited by Federal regulations from fishing, hunting, or trapping on public lands in an area may fish, hunt, or trap on public lands in accordance with the appropriate State regulations.

■ 4. In subpart D of 36 CFR part 242 and 50 CFR part 100, § .26 is revised to read as follows:

**§ .26 Subsistence taking of wildlife.**

(a) You may take wildlife for subsistence uses by any method, except as prohibited in this section or by other Federal statute. Taking wildlife for subsistence uses by a prohibited method is a violation of this part. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by this part is prohibited.

(b) Except for special provisions found at paragraphs (n)(1) through (26) of this section, the following methods and means of taking wildlife for subsistence uses are prohibited:

(1) Shooting from, on, or across a highway;

(2) Using any poison;

(3) Using a helicopter in any manner, including transportation of individuals, equipment, or wildlife; however, this prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life-threatening situation;

(4) Taking wildlife from a motorized land or air vehicle when that vehicle is in motion, or from a motor-driven boat when the boat's progress from the motor's power has not ceased;

(5) Using a motorized vehicle to drive, herd, or molest wildlife;

(6) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge;

(7) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle, or pistol using center-firing cartridges, for the taking of ungulates, bear, wolves, or wolverine, except that—

(i) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine;

(ii) Only a muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, elk, moose, musk ox, and mountain goat;

(8) Using or being aided by use of a pit, fire, artificial light, radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, conventional steel trap with a jaw spread over 9 inches, or conibear style trap with a jaw spread over 11 inches;

(9) Using a snare, except that an individual in possession of a valid hunting license may use nets and snares to take unclassified wildlife, ptarmigan, grouse, or hares; and, individuals in possession of a valid trapping license may use snares to take furbearers;

(10) Using a trap to take ungulates or bear;

(11) Using hooks to physically snag, impale, or otherwise take wildlife; however, hooks may be used as a trap drag;

(12) Using a crossbow to take ungulates, bear, wolf, or wolverine in any area restricted to hunting by bow and arrow only;

(13) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting an inch-wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least 1 ounce (437.5 grains);

(14) Using bait for taking ungulates, bear, wolf, or wolverine; except, you may use bait to take wolves and wolverine with a trapping license, and you may use bait to take black bears with a hunting license as authorized in Unit-specific regulations at paragraphs (n)(1) through (26) of this section. Baiting of black bears is subject to the following restrictions:

(i) Before establishing a black bear bait station, you must register the site with ADF&G;

(ii) When using bait, you must clearly mark the site with a sign reading "black bear bait station" that also displays your hunting license number and ADF&G-assigned number;

(iii) You may use only biodegradable materials for bait; you may use only the head, bones, viscera, or skin of legally harvested fish and wildlife for bait;

(iv) You may not use bait within ¼ mile of a publicly maintained road or trail;

(v) You may not use bait within 1 mile of a house or other permanent

dwelling, or within 1 mile of a developed campground or developed recreational facility;

(vi) When using bait, you must remove litter and equipment from the bait station site when done hunting;

(vii) You may not give or receive payment for the use of a bait station, including barter or exchange of goods;

(viii) You may not have more than two bait stations with bait present at any one time;

(15) Taking swimming ungulates, bears, wolves, or wolverine;

(16) Taking or assisting in the taking of ungulates, bear, wolves, wolverine, or other furbearers before 3 a.m. following the day in which airborne travel occurred (except for flights in regularly scheduled commercial aircraft); however, this restriction does not apply to subsistence taking of deer, the setting of snares or traps, or the removal of furbearers from traps or snares;

(17) Taking a bear cub or a sow accompanied by cub(s).

(c) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(d) The following methods and means of trapping furbearers for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at paragraph (b) of this section:

(1) Disturbing or destroying a den, except that you may disturb a muskrat pushup or feeding house in the course of trapping;

(2) Disturbing or destroying any beaver house;

(3) Taking beaver by any means other than a steel trap or snare, except that you may use firearms in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(4) Taking otter with a steel trap having a jaw spread of less than 5<sup>7</sup>/<sub>8</sub> inches during any closed mink and marten season in the same Unit;

(5) Using a net or fish trap (except a blackfish or fyke trap);

(6) Taking or assisting in the taking of furbearers by firearm before 3:00 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare.

(e) *Possession and transportation of wildlife.* (1) Except as specified in paragraphs (e)(2) or (f)(1) of this section, or as otherwise provided, you may not take a species of wildlife in any unit, or portion of a unit, if your total take of that species already obtained anywhere in the State under Federal and State

regulations equals or exceeds the harvest limit in that unit.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to § .10(d)(5)(iii) or as otherwise provided for by this part, an animal taken as part of a community harvest limit counts toward every community member's harvest limit for that species taken under Federal or State of Alaska regulations.

(f) *Harvest limits.* (1) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that if you have taken a harvest limit for a particular species under a trapping season, you may take additional animals under the harvest limit specified for a hunting season or vice versa.

(2) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of "one brown/grizzly bear per year" counts against a "one brown/grizzly bear every four regulatory years" harvest limit in other Units. You may not take more than one brown/grizzly bear in a regulatory year.

(3) The Assistant Regional Director for Subsistence Management, FWS, is authorized to open, close, or adjust Federal subsistence lynx seasons and to set harvest and possession limits for lynx in Units 6, 7, 11, 12, 13, 14, 15, 16, 20A, 20B, 20C east of the Teklanika River, 20D, and 20E, with a maximum season of November 1–February 28. This delegation may be exercised only when it is necessary to conserve lynx populations or to continue subsistence uses, only within guidelines listed within the ADF&G Lynx Harvest Management Strategy, and only after staff analysis of the potential action, consultation with the appropriate Regional Council Chairs, and Interagency Staff Committee concurrence.

(g) *Evidence of sex and identity.* (1) If subsistence take of Dall sheep is restricted to a ram, you may not possess or transport a harvested sheep unless both horns accompany the animal.

(2) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, you may not possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal, except that in Units 1–5 antlers are also considered proof of sex for deer if the antlers are naturally attached to an

entire carcass, with or without the viscera; and except in Units 11, 13, 19, 21, and 24, where you may possess either sufficient portions of the external sex organs (still attached to a portion of the carcass) or the head (with or without antlers attached; however, the antler stumps must remain attached) to indicate the sex of the harvested moose; however, this paragraph (g)(2) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(3) If a moose harvest limit requires an antlered bull, an antler size, or configuration restriction, you may not possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. If you possess a set of antlers with less than the required number of brow tines on one antler, you must leave the antlers naturally attached to the unbroken, uncut skull plate; however, this paragraph (g)(3) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(h) *Removing harvest from the field.* You must leave all edible meat on the bones of the front quarters and hind quarters of caribou and moose harvested in Units 9, 17, 18, and 19B prior to October 1 until you remove the meat from the field or process it for human consumption. You must leave all edible meat on the bones of the front quarters, hind quarters, and ribs of moose harvested in Unit 21 prior to October 1 until you remove the meat from the field or process it for human consumption. You must leave all edible meat on the bones of the front quarters, hind quarters, and ribs of caribou and moose harvested in Unit 24 prior to October 1 until you remove the meat from the field or process it for human consumption. Meat of the front quarters, hind quarters, or ribs from a harvested moose or caribou may be processed for human consumption and consumed in the field; however, meat may not be removed from the bones for purposes of transport out of the field.

(i) *Returning of tags, marks, or collars.* If you take an animal that has been marked or tagged for scientific studies, you must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker when and where the animal was taken. You also must retain any ear tag, collar, radio, tattoo, or other identification with the hide until it is sealed, if sealing is required; in all cases, you must return

any identification equipment to the ADF&G or to an agency identified on such equipment.

(j) *Sealing of bear skins and skulls.* (1) Sealing requirements for bear apply to brown bears taken in all Units, except as specified in this paragraph, and black bears of all color phases taken in Units 1–7, 11–17, and 20.

(2) You may not possess or transport from Alaska the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in Units 5, 9B, 9E, 17, 18, 19A and 19B downstream of and including the Aniak River drainage, 21D, 22, 23, 24, and 26A need not be sealed unless removed from the area.

(3) You must keep a bear skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision does not apply to brown bears taken within Units 5, 9B, 9E, 17, 18, 19A and 19B downstream of and including the Aniak River drainage, 21D, 22, 23, 24, and 26A and which are not removed from the Unit.

(i) In areas where sealing is required by Federal regulations, you may not possess or transport the hide of a bear that does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in Units 9B, 17, 18, and 19A and 19B downstream of and including the Aniak River drainage is removed from the area, you must first have it sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative must remove and retain the skin of the skull and front claws of the bear.

(iii) If you remove the skin or skull of a bear taken in Units 21D, 22, 23, 24, and 26A from the area or present it for commercial tanning within the area, you must first have it sealed by an ADF&G representative in Barrow, Galena, Nome, or Kotzebue; at the time of sealing, the ADF&G representative must remove and retain the skin of the skull and front claws of the bear.

(iv) If you remove the skin or skull of a bear taken in Unit 5 from the area, you must first have it sealed by an ADF&G representative in Yakutat.

(v) If you remove the skin or skull of a bear taken in Unit 9E from Unit 9, you must first have it sealed by an authorized sealing representative. At the time of sealing, the representative must

remove and retain the skin of the skull and front claws of the bear.

(4) You may not falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulations.

(k) *Sealing of beaver, lynx, marten, otter, wolf, and wolverine.* You may not possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13E, or 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the State, unless the skin has been sealed by an authorized representative in accordance with State or Federal regulations.

(1) In Unit 18, you must obtain an ADF&G seal for beaver skins only if they are to be sold or commercially tanned.

(2) In Unit 2, you must seal any wolf taken on or before the 30th day after the date of taking.

(l) If you take a species listed in paragraph (k) of this section but are unable to present the skin in person, you must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in paragraph (k) of this section.

(m) You may take wildlife, outside of established season or harvest limits, for food in traditional religious ceremonies, that are part of a funerary or mortuary cycle, including memorial potlatches, under the following provisions:

(1) The harvest does not violate recognized principles of wildlife conservation and uses the methods and means allowable for the particular species published in the applicable Federal regulations. The appropriate Federal land manager will establish the number, species, sex, or location of harvest, if necessary, for conservation purposes. Other regulations relating to ceremonial harvest may be found in the unit-specific regulations in § .26(n).

(2) No permit or harvest ticket is required for harvesting under this section; however, the harvester must be a Federally qualified subsistence user with customary and traditional use in the area where the harvesting will occur.

(3) In Units 1–26 (except for Koyukon/Gwich'in potlatch ceremonies in Units 20F, 21, 24, or 25):

(i) A tribal chief, village or tribal council president, or the chief's or president's designee for the village in which the religious/cultural ceremony will be held, or a Federally qualified subsistence user outside of a village or tribal-organized ceremony, must notify

the nearest Federal land manager that a wildlife harvest will take place. The notification must include the species, harvest location, and number of animals expected to be taken.

(ii) Immediately after the wildlife is taken, the tribal chief, village or tribal council president or designee, or other Federally qualified subsistence user must create a list of the successful hunters and maintain these records, including the name of the decedent for whom the ceremony will be held. If requested, this information must be available to an authorized representative of the Federal land manager.

(iii) The tribal chief, village or tribal council president or designee, or other Federally qualified subsistence user outside of the village in which the religious/cultural ceremony will be held must report to the Federal land manager the harvest location, species, sex, and number of animals taken as soon as practicable, but not more than 15 days after the wildlife is taken.

(4) In Units 20F, 21, 24, and 25 (for Koyukon/Gwich'in potlatch ceremonies only):

(i) Taking wildlife outside of established season and harvest limits is authorized if it is for food for the traditional Koyukon/Gwich'in Potlatch Funerary or Mortuary ceremony and if it is consistent with conservation of healthy populations.

(ii) Immediately after the wildlife is taken, the tribal chief, village or tribal council president, or the chief's or president's designee for the village in which the religious ceremony will be held must create a list of the successful hunters and maintain these records. The list must be made available, after the harvest is completed, to a Federal land manager upon request.

(iii) As soon as practical, but not more than 15 days after the harvest, the tribal chief, village council president, or designee must notify the Federal land manager about the harvest location, species, sex, and number of animals taken.

(n) *Unit regulations.* You may take for subsistence unclassified wildlife, all squirrel species, and marmots in all Units, without harvest limits, for the period of July 1–June 30. Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at paragraphs (n)(1) through (26) of this section.

(1) *Unit 1.* Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in

Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1A consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound;

(ii) Unit 1B consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound, and Seward Passage;

(iii) Unit 1C consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, excluding drainages into Farragut Bay;

(iv) Unit 1D consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses;

(B) Unit 1A—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1B—the Anan Creek drainage within 1 mile of Anan Creek downstream from the mouth of Anan Lake, including the area within a 1-mile radius from the mouth of Anan Creek Lagoon, is closed to the taking of bear;

(D) Unit 1C:

(1) You may not hunt within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area;

(2) You may not take mountain goat in the area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier;

(vi) You may not trap furbearers for subsistence uses in Unit 1C, Juneau area, on the following public lands:

(A) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(B) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(C) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(D) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance

Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail;

(vii) Unit-specific regulations:

(A) You may hunt black bear with bait in Units 1A, 1B, and 1D between April 15 and June 15;

(B) You may not shoot ungulates, bear, wolves, or wolverine from a boat, unless you are certified as disabled.

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 2 bears, no more than one may be a blue or glacier bear .....	Sept. 1–June 30.
Brown Bear: 1 bear every four regulatory years by State registration permit only .....	Sept. 15–Dec. 31. Mar. 15–May 31.
Deer:	
Unit 1A—4 antlered deer .....	Aug. 1–Dec. 31.
Unit 1B—2 antlered deer. The Petersburg District Ranger is authorized to close the season based on conservation concerns, in consultation with ADF&G and the chair of the Southeast Alaska Subsistence Regional Advisory Council.	Aug. 1–Dec. 31.
Unit 1C—4 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31 .....	Aug. 1–Dec. 31.
Goat:	
Unit 1A—Revillagigedo Island only .....	No open season.
Unit 1B—that portion north of LeConte Bay—1 goat by State registration permit only; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1A and Unit 1B—that portion on the Cleveland Peninsula south of the divide between Yes Bay and Santa Anna Inlet.	No open season.
Unit 1A and Unit 1B—remainder—2 goats; a State registration permit will be required for the taking of the first goat and a Federal registration permit for the taking of a second goat. The taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1C—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River, and all drainages of the Chilkat Range south of the Endicott River—1 goat by State registration permit only.	Oct. 1–Nov. 31.
Unit 1C—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier.	No open season.
Unit 1C—remainder—1 goat by State registration permit only .....	Aug. 1–Nov. 30.
Unit 1D—that portion lying north of the Katzeihin River and northeast of the Haines highway—1 goat by State registration permit only.	Sept. 15–Nov. 30.
Unit 1D—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad .....	No open season.
Unit 1D—remainder—1 goat by State registration permit only .....	Aug. 1–Dec. 31.
Moose:	
Unit 1A—1 antlered bull by Federal registration permit .....	Sept. 5–Oct. 15.
Unit 1B—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only. The Petersburg District Ranger is authorized to close the season based on conservation concerns, in consultation with ADF&G and the Chair of the Southeast Alaska Subsistence Regional Advisory Council.	Sept. 15–Oct. 15.
Unit 1C—that portion south of Point Hobart including all Port Houghton drainages—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only.	Sept. 15–Oct. 15.
Unit 1C—remainder, excluding drainages of Berners Bay—1 antlered bull by State registration permit only .....	Sept. 15–Oct. 15.
Unit 1C, Berners Bay .....	No open season.
Unit 1D .....	No open season.
Coyote: 2 coyotes .....	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes .....	Nov. 1–Feb. 15.
Hare (Snowshoe): 5 hares per day .....	Sept. 1–Apr. 30.
Lynx: 2 lynx .....	Dec. 1–Feb. 15.
Wolf: 5 wolves .....	Aug. 1–Apr. 30.
Wolverine: 1 wolverine .....	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, and Ruffed): 5 per day, 10 in possession .....	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession .....	Aug. 1–May 15.
<b>Trapping</b>	
Beaver: Unit 1—No limit .....	Dec. 1–May 15.
Coyote: No limit .....	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit .....	Dec. 1–Feb. 15.
Lynx: No limit .....	Dec. 1–Feb. 15.
Marten: No limit .....	Dec. 1–Feb. 15.
Mink and Weasel: No limit .....	Dec. 1–Feb. 15.
Muskrat: No limit .....	Dec. 1–Feb. 15.
Otter: No limit .....	Dec. 1–Feb. 15.
Wolf: No limit .....	Nov. 10–Apr. 30.
Wolverine: No limit .....	Nov. 10–Apr. 30.

(2) *Unit 2.* Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and

east of the longitude of the westernmost point on Warren Island.

- (i) Unit-specific regulations:
- (A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not shoot ungulates, bear, wolves, or wolverine from a boat, unless you are certified as disabled.

(ii) [Reserved]

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 2 bears, no more than one may be a blue or glacier bear .....	Sept. 1–June 30.
Deer:	
5 deer; however, no more than one may be an antlerless deer. Antlerless deer may be taken only during the period Oct. 15—Federal/State harvest report. The Tongass National Forest Supervisor is authorized to reduce the harvest to 4 deer based on conservation concerns, in consultation with ADF&G and the Chair of the Southeast Alaska Subsistence Regional Advisory Council.	July 24–Dec. 31.
The Federal public lands on Prince of Wales Island, excluding the southeast portion (lands south of the West Arm of Cholmondeley Sound draining into Cholmondeley Sound and draining eastward into Clarence Strait), are closed to hunting of deer from Aug. 1 to Aug. 15, except by Federally qualified subsistence users hunting under these regulations.	
Coyote: 2 coyotes .....	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes .....	Nov. 1–Feb. 15.
Hare (Snowshoe): 5 hares per day .....	Sept. 1–Apr. 30.
Lynx: 2 lynx .....	Dec. 1–Feb. 15.
Wolf: 5 wolves. The Tongass National Forest Supervisor (or designee) may close the Federal hunting and trapping season in consultation with ADF&G and the Chair of the Southeast Alaska Subsistence Regional Advisory Council, when the combined Federal-State harvest quota is reached.	Sept. 1–Mar. 31.
Wolverine: 1 wolverine .....	Nov. 10–Feb. 15.
Grouse (Spruce and Ruffed): 5 per day, 10 in possession .....	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession .....	Aug. 1–May 15.
<b>Trapping</b>	
Beaver: No limit .....	Dec. 1–May 15.
Coyote: No limit .....	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit .....	Dec. 1–Feb. 15.
Lynx: No limit .....	Dec. 1–Feb. 15.
Marten: No limit .....	Dec. 1–Feb. 15.
Mink and Weasel: No limit .....	Dec. 1–Feb. 15.
Muskrat: No limit .....	Dec. 1–Feb. 15.
Otter: No limit .....	Dec. 1–Feb. 15.
Wolf: No limit. The Tongass National Forest Supervisor (or designee) may close the Federal hunting and trapping season in consultation with ADF&G and the Chair of the Southeast Alaska Subsistence Regional Advisory Council, when the combined Federal-State harvest quota is reached. Any wolf taken in Unit 2 must be sealed within 30 days of harvest.	Nov. 15–Mar. 31.
Wolverine: No limit .....	Nov. 10–Apr. 30.

(3) *Unit 3.* (i) Unit 3 consists of all islands west of Unit 1B, north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevaroff, Woronkofski, Etolin, Wrangell, and Deer Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, you may not take ungulates, bear, wolves, and wolverine along a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground;

(B) You may not take black bears in the Petersburg Creek drainage on Kupreanof Island;

(C) You may not hunt in the Blind Slough draining into Wrangell Narrows and a strip one-fourth mile wide on

each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not shoot ungulates, bear, wolves, or wolverine from a boat, unless you are certified as disabled.

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 2 bears, no more than one may be a blue or glacier bear .....	Sept. 1–June 30.
Deer:	
Unit 3—Mitkof, Woewodski, and Butterworth Islands—1 antlered deer. The Petersburg District Ranger is authorized to close the season based on conservation concerns, in consultation with ADF&G and the chair of the Southeast Alaska Subsistence Regional Advisory Council.	Oct. 15–Oct. 31.
Unit 3—remainder—2 antlered deer. The Petersburg District Ranger is authorized to open the December season by announcement, or close any portion of the entire season based on conservation concerns, in consultation with ADF&G and the chair of the Southeast Alaska Subsistence Regional Advisory Council.	Aug. 1–Nov. 30. Dec. 1–Dec. 31, season to be announced.
Moose:	

Harvest limits	Open season
1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler by State registration permit only. The Petersburg District Ranger is authorized to close the season based on conservation concerns, in consultation with ADF&G and the Chair of the Southeast Alaska Subsistence Regional Advisory Council.	Sept. 15–Oct. 15.
Coyote: 2 coyotes .....	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes .....	Nov. 1–Feb. 15.
Hare (Snowshoe): 5 hares per day .....	Sept. 1–Apr. 30.
Lynx: 2 lynx .....	Dec. 1–Feb. 15.
Wolf: 5 wolves .....	Aug. 1–Apr. 30.
Wolverine: 1 wolverine .....	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, and Ruffed): 5 per day, 10 in possession .....	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession .....	Aug. 1–May 15.
<b>Trapping</b>	
Beaver:	
Unit 3—Mittkof Island—No limit .....	Dec. 1–Apr. 15.
Unit 3—except Mittkof Island—No limit .....	Dec. 1–May 15.
Coyote: No limit .....	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit .....	Dec. 1–Feb. 15.
Lynx: No limit .....	Dec. 1–Feb. 15.
Marten: No limit .....	Dec. 1–Feb. 15.
Mink and Weasel: No limit .....	Dec. 1–Feb. 15.
Muskrat: No limit .....	Dec. 1–Feb. 15.
Otter: No limit .....	Dec. 1–Feb. 15.
Wolf: No limit .....	Nov. 10–Apr. 30.
Wolverine: No limit .....	Nov. 10–Apr. 30.

(4) *Unit 4.* (i) Unit 4 consists of all islands south and west of Unit 1C and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take brown bears in the Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands;

(B) You may not take brown bears in the Salt Lake Closed Area (Admiralty

Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay;

(C) You may not take brown bears in the Port Althorp Closed Area (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock);

(D) You may not use any motorized land vehicle for brown bear hunting in the Northeast Chichagof Controlled Use Area (NECCUA) consisting of all portions of Unit 4 on Chichagof Island north of Tenakee Inlet and east of the drainage divide from the northwest point of Gull Cove to Port Frederick

Portage, including all drainages into Port Frederick and Mud Bay.

(iii) Unit-specific regulations:

(A) You may shoot ungulates from a boat. You may not shoot bear, wolves, or wolverine from a boat, unless you are certified as disabled;

(B) Five Federal registration permits will be issued by the Sitka or Hoonah District Ranger for the taking of brown bear for educational purposes associated with teaching customary and traditional subsistence harvest and use practices. Any bear taken under an educational permit does not count in an individual's one bear every four regulatory years limit.

Harvest limits	Open season
<b>Hunting</b>	
Brown Bear:	
Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136°21' W. long.) to Rodgers Point (57°35' N. lat., 135°33' W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57°34' N. lat., 135°25' W. long.) to the entrance of Gut Bay (56°44' N. lat. 134°38' W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31. Mar. 15–May 31.
Unit 4—remainder—1 bear every four regulatory years by State registration permit only .....	Sept. 15–Dec. 31. Mar. 15–May 20.
Deer: 6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31 .....	Aug. 1–Jan. 31.
Goat: 1 goat by State registration permit only .....	Aug. 1–Dec. 31.
Coyote: 2 coyotes .....	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes .....	Nov. 1–Feb. 15.
Hare (Snowshoe): 5 hares per day .....	Sept. 1–Apr. 30.
Lynx: 2 lynx .....	Dec. 1–Feb. 15.
Wolf: 5 wolves .....	Aug. 1–Apr. 30.
Wolverine: 1 wolverine .....	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, and Ruffed): 5 per day, 10 in possession .....	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession .....	Aug. 1–May 15.
<b>Trapping</b>	
Beaver: Unit 4—No limit .....	Dec. 1–May 15.



Harvest limits	Open season
Coyote: No limit .....	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit .....	Dec. 1–Feb. 15.
Lynx: No limit .....	Dec. 1–Feb. 15.
Marten: No limit .....	Dec. 1–Feb. 15.
Mink and Weasel: No limit .....	Dec. 1–Feb. 15.
Muskrat: No limit .....	Dec. 1–Feb. 15.
Otter: No limit .....	Dec. 1–Feb. 15.
Wolf: No limit .....	Nov. 10–Apr. 30.
Wolverine: No limit .....	Nov. 10–Apr. 30.

(5) *Unit 5.* (i) Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills:

(A) Unit 5A consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard

Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5B consists of the remainder of Unit 5.

(ii) You may not take wildlife for subsistence uses on public lands within Glacier Bay National Park.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not shoot ungulates, bear, wolves, or wolverine from a boat, unless you are certified as disabled;

(C) You may hunt brown bear in Unit 5 with a Federal registration permit in lieu of a State metal locking tag; if you have obtained a Federal registration permit prior to hunting.

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 2 bears, no more than one may be a blue or glacier bear .....	Sept. 1–June 30.
Brown Bear: 1 bear by Federal registration permit only .....	Sept. 1–May 31.
Deer:	
Unit 5A—1 buck .....	Nov. 1–Nov. 30.
Unit 5B .....	No open season.
Goat:	
Unit 5A—that area between the Hubbard Glacier and the West Nunatak Glacier on the north and east sides of Nunatak Fjord—1 goat by Federal registration permit. The U.S. Forest Service Yakutat District Ranger and ADF&G will jointly announce the harvest quota prior to the season. A minimum of two goats in the harvest quota will be reserved for Federally qualified subsistence users. The season will be closed by local announcement from the U.S. Forest Service Yakutat District Ranger when the quota has been taken. The harvest quota and season announcements will be made in consultation with The National Park Service and local residents.	Aug. 1–Jan. 31.
Unit 5A—remainder—1 goat by Federal registration permit. The U.S. Forest Service Yakutat District Ranger and ADF&G will jointly announce the harvest quota prior to the season. A minimum of four goats in the harvest quota will be reserved for Federally qualified subsistence users. The season will be closed by local announcement when the quota has been taken. The harvest quota and season announcements will be made in consultation with The National Park Service and local residents.	Aug. 1–Jan. 31.
Unit 5B—1 goat by Federal registration permit only .....	Aug. 1–Jan. 31.
Moose:	
Unit 5A, Nunatak Bench—1 moose by State registration permit only. The season will be closed when 5 moose have been taken from the Nunatak Bench.	Nov. 15–Feb. 15.
Unit 5A, except Nunatak Bench—1 bull by joint State/Federal registration permit only. The season will be closed when 60 bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 bulls have been taken in that area. From Oct. 8–21, public lands will be closed to taking of moose, except by residents of Unit 5A hunting under these regulations.	Oct. 8–Nov. 15.
Unit 5B—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5B.	Sept. 1–Dec. 15.
Coyote: 2 coyotes .....	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes .....	Nov. 1–Feb. 15.
Hare (Snowshoe): 5 hares per day .....	Sept. 1–Apr. 30.
Lynx: 2 lynx .....	Dec. 1–Feb. 15.
Wolf: 5 wolves .....	Aug. 1–Apr. 30.
Wolverine: 1 wolverine .....	Nov. 10–Feb. 15.
Grouse (Spruce and Ruffed): 5 per day, 10 in possession .....	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession .....	Aug. 1–May 15.
<b>Trapping</b>	
Beaver: No limit .....	Nov. 10–May 15.
Coyote: No limit .....	Nov. 10–Feb. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Nov. 10–Feb. 15.
Lynx: No limit .....	Dec. 1–Feb. 15.
Marten: No limit .....	Nov. 10–Feb. 15.
Mink and Weasel: No limit .....	Nov. 10–Feb. 15.
Muskrat: No limit .....	Dec. 1–Feb. 15.
Otter: No limit .....	Nov. 10–Feb. 15.
Wolf: No limit .....	Nov. 10–Apr. 30.
Wolverine: No limit .....	Nov. 10–Apr. 30.

(6) *Unit 6.* (i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages;

(A) Unit 6A consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6B consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6C consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6D consists of the remainder of Unit 6.

(ii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may take coyotes in Units 6B and 6C with the aid of artificial lights;

(C) One permit will be issued by the Cordova District Ranger to the Native Village of Eyak to take one bull moose from Federal lands in Units 6B or C for their annual Memorial/Sobriety Day potlatch;

(D) A Federally qualified subsistence user (recipient) who is either blind, 65 years of age or older, at least 70 percent disabled, or temporarily disabled may designate another Federally qualified subsistence user to take any moose, deer, black bear, and beaver on his or her behalf in Unit 6, and goat in Unit 6D, unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients, but may have no more than one harvest limit in his or her possession at any one time;

(E) A hunter younger than 10 years old at the start of the hunt may not be issued a Federal subsistence permit to harvest black bear, deer, goat, moose, wolf, and wolverine;

(F) A hunter younger than 10 years old may harvest black bear, deer, goat, moose, wolf, and wolverine under the direct, immediate supervision of a licensed adult, at least 18 years old. The animal taken is counted against the adult's harvest limit. The adult is responsible for ensuring that all legal requirements are met.

(G) Up to five permits will be issued by the Cordova District Ranger to the Native Village of Chenega annually to harvest up to five deer total from Federal public lands in Unit 6D for their annual Old Chenega Memorial. Permits will have effective dates of July 1–June 30.

(H) Up to five permits will be issued by the Cordova District Ranger to the Tatitlek IRA Council annually to harvest up to five deer total from Federal public lands in Unit 6D for their annual Cultural Heritage Week. Permits will have effective dates of July 1–June 30.

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 1 bear .....	Sept. 1–June 30.
Deer: 4 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31 .....	Aug. 1–Dec. 31.
Goats:	
Unit 6A and B—1 goat by State registration permit only .....	Aug. 20–Jan. 31.
Unit 6C .....	No open season.
Unit 6D (subareas RG242, RG243, RG244, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only. In each of the Unit 6D subareas, goat seasons will be closed by the Cordova District Ranger when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG243—4 goats, RG244—2 goats, RG249—4 goats, RG266—4 goats, RG252—1 goat.	Aug. 20–Jan. 31.
Moose:	
Unit 6C—1 antlerless moose by Federal registration permit only .....	Sept. 1–Oct. 31.
Unit 6C—1 bull by Federal registration permit only .....	Sept. 1–Dec. 31.
(In Unit 6C, only one moose permit may be issued per household. A household receiving a State permit for Unit 6C moose may not receive a Federal permit. The annual harvest quota will be announced by the U.S. Forest Service, Cordova Office, in consultation with ADF&G. The Federal harvest allocation will be 100% of the antlerless moose permits and 75% of the bull permits.)	
Unit 6—remainder .....	No open season.
Beaver: 1 beaver per day, 1 in possession .....	May 1–Oct. 31.
Coyote:	
Unit 6A and D—2 coyotes .....	Sept. 1–Apr. 30.
Unit 6B and 6C—No limit .....	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases) .....	No open season.
Hare (Snowshoe): No limit .....	July 1–June 30.
Lynx: 2 lynx .....	Nov. 10–Jan. 31.
Wolf: 5 wolves .....	Aug. 10–Apr. 30.
Wolverine: 1 wolverine .....	Sept. 1–Mar. 31.
Grouse (Spruce): 5 per day, 10 in possession .....	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession .....	Aug. 1–May 15.
<b>Trapping</b>	
Beaver: No limit .....	Dec. 1–Apr. 30.
Coyote:	
Unit 6C—south of the Copper River Highway and east of the Heney Range—No limit .....	Nov. 10–Apr. 30.
Unit 6A, B, C remainder, and D—No limit .....	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Nov. 10–Feb. 28.
Marten: No limit .....	Nov. 10–Feb. 28.
Mink and Weasel: No limit .....	Nov. 10–Jan. 31.
Muskrat: No limit .....	Nov. 10–June 10.
Otter: No limit .....	Nov. 10–Mar. 31.
Wolf: No limit .....	Nov. 10–Mar. 31.

Harvest limits	Open season
Wolverine: No limit .....	Nov. 10–Feb. 28.

(7) *Unit 7.* (i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in the Kenai Fjords National Park;

(B) You may not hunt in the Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek, and Byron Glacier; however, you may hunt grouse,

ptarmigan, hares, and squirrels with shotguns after September 1.

(C) You may not hunt moose in the Resurrection Creek Closed Area in Unit 7, which consists of the drainages of Resurrection Creek downstream from Rimrock and Highland Creeks including Palmer Creek.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15; except in the drainages of Resurrection Creek and its tributaries.

(B) [Reserved]

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 3 bears .....	July 1–June 30.
Moose:	
Unit 7—that portion draining into Kings Bay—Public lands are closed to the taking of moose by all users .....	No open season.
Unit 7, remainder—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 10–Sept 20.
Beaver: 1 beaver per day, 1 in possession .....	May 1–Oct. 10.
Coyote: No limit .....	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes .....	Nov. 1–Feb. 15.
Hare (Snowshoe): No limit .....	July 1–June 30.
Lynx: 2 lynx .....	Nov. 10–Jan. 31.
Wolf:	
Unit 7—that portion within the Kenai National Wildlife Refuge—2 wolves .....	Aug. 10–Apr. 30.
Unit 7, remainder—5 wolves .....	Aug. 10–Apr. 30.
Wolverine: 1 wolverine .....	Sept. 1–Mar. 31.
Grouse (Spruce): 10 per day, 20 in possession .....	Aug. 10–Mar. 31.
Grouse (Ruffed) .....	No open season.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession .....	Aug. 10–Mar. 31.
<b>Trapping</b>	
Beaver: 20 beaver per season .....	Nov. 10–Mar. 31.
Coyote: No limit .....	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Nov. 10–Feb. 28.
Lynx: No limit .....	Jan. 1–Jan. 31.
Marten: No limit .....	Nov. 10–Jan. 31.
Mink and Weasel: No limit .....	Nov. 10–Jan. 31.
Muskrat: No limit .....	Nov. 10–May 15.
Otter: No limit .....	Nov. 10–Feb. 28.
Wolf: No limit .....	Nov. 10–Mar. 31.
Wolverine: No limit .....	Nov. 10–Feb. 28.

(8) *Unit 8.* Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak,

Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

(i) If you have a trapping license, you may take beaver with a firearm in Unit 8 from Nov. 10–Apr. 30.

(ii) [Reserved]

Harvest limits	Open season
<b>Hunting</b>	
Brown Bear: 1 bear by Federal registration permit only. Up to 1 permit may be issued in Akhiok; up to 1 permit may be issued in Karluk; up to 3 permits may be issued in Larsen Bay; up to 2 permits may be issued in Old Harbor; up to 2 permits may be issued in Ouzinkie; and up to 2 permits may be issued in Port Lions. Permits will be issued by the Kodiak Refuge Manager.	Dec. 1–Dec. 15. Apr. 1–May 15.
Deer: Unit 8—all lands within the Kodiak Archipelago within the Kodiak National Wildlife Refuge, including lands on Kodiak, Ban, Uganik, and Afognak Islands—3 deer; however, antlerless deer may be taken only from Oct. 1–Jan. 31.	Aug. 1–Jan. 31.
Elk: Kodiak, Ban, Uganik, and Afognak Islands—1 elk per household by Federal registration permit only. The season will be closed by announcement of the Refuge Manager, Kodiak National Wildlife Refuge when the combined Federal/State harvest reaches 15% of the herd.	Sept. 15–Nov. 30.

Harvest limits	Open season
Fox, Red (including Cross, Black and Silver Phases): 2 foxes .....	Sept. 1–Feb. 15.
Hare (Snowshoe): No limit .....	July 1–June 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession .....	Aug. 10–Apr. 30.
<b>Trapping</b>	
Beaver: 30 beaver per season .....	Nov. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Nov. 10–Mar. 31.
Marten: No limit .....	Nov. 10–Jan. 31.
Mink and Weasel: No limit .....	Nov. 10–Jan. 31.
Muskrat: No limit .....	Nov. 10–June 10.
Otter: No limit .....	Nov. 10–Jan. 31.

(9) *Unit 9.* (i) Unit 9 consists of the Alaska Peninsula and adjacent islands, including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands;

(A) Unit 9A consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9B consists of the Kvichak River drainage except those lands drained by the Kvichak River/Bay between the Alagnak River drainage and the Naknek River drainage;

(C) Unit 9C consists of the Alagnak (Branch) River drainage, the Naknek River drainage, lands drained by the Kvichak River/Bay between the Alagnak River drainage and the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9D consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay, including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9E consists of the remainder of Unit 9.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in Katmai National Park;

(B) You may not use motorized vehicles, except aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts from Aug. 1–Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9C within the

Naknek River drainage upstream from and including the King Salmon Creek drainage; however, you may use a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail, and on frozen surfaces of the Naknek River and Big Creek.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 9B from April 1–May 31 and in the remainder of Unit 9 from April 1–30;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in Unit 9B, except that portion within the Lake Clark National Park and Preserve, if you have obtained a State registration permit prior to hunting.

(C) In Unit 9B, Lake Clark National Park and Preserve, residents of Iliamna, Newhalen, Nondalton, Pedro Bay, Port Alsworth, residents of that portion of the park resident zone in Unit 9B, and 13,440 permit holders, may hunt brown bear by Federal registration permit in lieu of a resident tag; ten permits will be available with at least one permit issued in each community; however, no more than five permits will be issued in a single community. The season will be closed when four females or ten bears have been taken, whichever occurs first. The permits will be issued and closure announcements made by the Superintendent Lake Clark National Park and Preserve;

(D) Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth may take up to a total of 10 bull moose in Unit 9B for ceremonial purposes, under the terms of a Federal registration permit from July 1–June 30. Permits will be issued to individuals only at the request of a local organization. This 10-moose limit is not cumulative with that permitted for potlatches by the State;

(E) For Units 9C and 9E only, a Federally qualified subsistence user (recipient) of Units 9C and 9E may designate another Federally qualified subsistence user of Units 9C and 9E to take bull caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report and turn over all meat to the recipient. There is no restriction on the number of possession limits the designated hunter may have in his/her possession at any one time;

(F) For Unit 9D, a Federally qualified subsistence user (recipient) may designate another Federally qualified subsistence user to take caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than four harvest limits in his/her possession at any one time;

(G) The communities of False Pass, King Cove, Cold Bay, Sand Point, and Nelson Lagoon annually may each take, from October 1–December 31 or May 10–25, one brown bear for ceremonial purposes, under the terms of a Federal registration permit. A permit will be issued to an individual only at the request of a local organization. The brown bear may be taken from either Unit 9D or Unit 10 (Unimak Island) only;

(H) You may hunt brown bear in Unit 9E with a Federal registration permit in lieu of a State locking tag if you have obtained a Federal registration permit prior to hunting.

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 3 bears .....	July 1–June 30.
Brown Bear:	

Harvest limits	Open season
Unit 9B—Lake Clark National Park and Preserve—Rural residents of Iliamna, Newhalen, Nondalton, Pedro Bay, Port Alsworth, residents of that portion of the park resident zone in Unit 9B; and 13,440 permit holders—1 bear by Federal registration permit only. The season will be closed by the Lake Clark National Park and Preserve Superintendent when four females or ten bear have been taken, whichever occurs first.	July 1–June 30.
Unit 9B, remainder—1 bear by State registration permit only .....	Sept. 1–May 31.
Unit 9C—1 bear by Federal registration permit only .....	Oct. 1–May 31.
The season will be closed by the Katmai National Park and Preserve Superintendent in consultation with BLM and FWS land managers and ADF&G, when six females or ten bear have been taken, whichever occurs first.	
Unit 9E—1 bear by Federal registration permit .....	Sept. 25–Dec. 31. Apr. 15–May 25.
<b>Caribou:</b>	
Unit 9A—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30.	Aug. 10–Mar. 31.
Unit 9B—3 caribou; however, no more than 1 caribou may be taken from July 1–Nov. 30 .....	July 1–Apr. 15.
Unit 9C, that portion within the Alagnak River drainage—1 caribou .....	Aug. 1–Mar. 31.
Unit 9C, remainder—Federal public lands are closed to the taking of caribou.	
Unit 9D—Federal public lands are closed to the taking of caribou .....	No open season.
Unit 9E—Federal public lands are closed to the taking of caribou .....	No open season.
<b>Sheep:</b>	
Unit 9B, that portion within Lake Clark National Park and Preserve—1 ram with 3/4 curl or larger horn by Federal registration permit only. By announcement of the Lake Clark National Park and Preserve Superintendent, the summer/fall season will be closed when up to 5 sheep are taken and the winter season will be closed when up to 2 sheep are taken.	Jan. 1–Apr. 1.
Unit 9B—remainder—1 ram with 7/8 curl or larger horn by Federal registration permit only .....	Aug. 10–Oct. 10.
Unit 9—remainder—1 ram with 7/8 curl or larger horn .....	Aug. 10–Sept. 20.
<b>Moose:</b>	
Unit 9A—1 bull .....	Sept. 1–15.
Unit 9B—1 bull .....	Aug. 20–Sept. 15. Dec. 1–Jan. 15.
Unit 9C—that portion draining into the Naknek River from the north—1 bull .....	Sept. 1–15. Dec. 1–31.
Unit 9C—that portion draining into the Naknek River from the south—1 bull by Federal registration permit only. Public lands are closed during December for the hunting of moose, except by Federally qualified subsistence users hunting under these regulations.	Sept. 1–15. Dec. 1–31.
Unit 9C—remainder—1 bull .....	Sept. 1–15. Dec. 15–Jan. 15. Dec. 15–Jan. 20.
Unit 9D—1 bull by Federal registration permit. Federal public lands will be closed by announcement of the Izembek Refuge Manager to the harvest of moose when a total of 10 bulls have been harvested between State and Federal hunts.	
Unit 9E—1 bull, however only antlered bulls may be taken Dec. 1–Jan. 31 .....	Aug. 20–Sept. 20. Dec. 1–Jan. 31.
Beaver: Unit 9B and 9E—2 beaver per day .....	Apr. 15–May 31.
Coyote: 2 coyotes .....	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White): No limit .....	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes .....	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit .....	July 1–June 30.
Lynx: 2 lynx .....	Nov. 10–Feb. 28.
Wolf: 10 wolves .....	Aug. 10–Apr. 30.
Wolverine: 1 wolverine .....	Sept. 1–Mar. 31.
Grouse (Spruce): 15 per day, 30 in possession .....	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession .....	Aug. 10–Apr. 30.
<b>Trapping</b>	
<b>Beaver:</b>	
No limit .....	Oct. 10–Mar. 31.
2 beaver per day; only firearms may be used .....	Apr. 15–May 31.
<b>Coyote:</b> No limit .....	
No limit .....	Nov. 10–Mar. 31.
<b>Fox, Arctic (Blue and White):</b> No limit .....	
No limit .....	Nov. 10–Feb. 28.
<b>Fox, Red (including Cross, Black and Silver Phases):</b> No limit .....	
No limit .....	Nov. 10–Feb. 28.
<b>Lynx:</b> No limit .....	
No limit .....	Nov. 10–Feb. 28.
<b>Marten:</b> No limit .....	
No limit .....	Nov. 10–Feb. 28.
<b>Mink and Weasel:</b> No limit .....	
No limit .....	Nov. 10–Feb. 28.
<b>Muskrat:</b> No limit .....	
No limit .....	Nov. 10–June 10.
<b>Otter:</b> No limit .....	
No limit .....	Nov. 10–Mar. 31.
<b>Wolf:</b> No limit .....	
No limit .....	Nov. 10–Mar. 31.
<b>Wolverine:</b> No limit .....	
No limit .....	Nov. 10–Feb. 28.

(10) *Unit 10.* (i) Unit 10 consists of the Aleutian Islands, Unimak Island, and the Pribilof Islands.

(ii) You may not take any wildlife species for subsistence uses on Otter Island in the Pribilof Islands.

(iii) In Unit 10—Unimak Island only, a Federally qualified subsistence user (recipient) may designate another Federally qualified subsistence user to

take caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any

number of recipients but may have no more than four harvest limits in his/her possession at any one time.

(iv) The communities of False Pass, King Cove, Cold Bay, Sand Point, and Nelson Lagoon annually may each take, from October 1–December 31 or May 10–25, one brown bear for ceremonial

purposes, under the terms of a Federal registration permit. A permit will be issued to an individual only at the request of a local organization. The brown bear may be taken from either Unit 9D or Unit 10 (Unimak Island) only.

Harvest limits	Open season
<b>Hunting</b>	
Caribou:	
Unit 10—Unimak Island only—2 caribou by Federal registration permit only .....	Aug. 1–Sept. 30. Nov. 15–Mar. 31.
Unit 10, remainder—No limit .....	July 1–June 30.
Coyote: 2 coyotes .....	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit .....	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes .....	Sept. 1–Feb. 15.
Wolf: 5 wolves .....	Aug. 10–Apr. 30.
Wolverine: 1 wolverine .....	Sept. 1–Mar. 31.
Ptarmigan (Rock and Willow): 20 per day, 40 in possession .....	Aug. 10–Apr. 30.
<b>Trapping</b>	
Coyote: 2 coyotes .....	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit .....	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes .....	Sept. 1–Feb. 28.
Mink and Weasel: No limit .....	Nov. 10–Feb. 28.
Muskrat: No limit .....	Nov. 10–June 10.
Otter: No limit .....	Nov. 10–Mar. 31.
Wolf: No limit .....	Nov. 10–Mar. 31.
Wolverine: No limit .....	Nov. 10–Feb. 28.

(11) *Unit 11.* Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) One moose without calf may be taken from June 20–July 31 in the Wrangell-St. Elias National Park and Preserve in Unit 11 or 12 for the Batzulnetas Culture Camp. Two hunters from either Chistochina or Mentasta Village may be designated by the Mt.

Sanford Tribal Consortium to receive the Federal subsistence harvest permit. The permit may be obtained from a Wrangell-St. Elias National Park and Preserve office.

(C) The Assistant Regional Director for Subsistence Management, FWS, is authorized to align the Federal subsistence wolverine trapping season with the Federal subsistence lynx seasons in Unit 11.

(ii) A joint permit may be issued to a pair of a minor and an elder to hunt sheep during the Sept. 21–Oct. 20 hunt. The following conditions apply:

(A) The permittee must be a minor aged 8 to 15 years old and an

accompanying adult 60 years of age or older;

(B) Both the elder and the minor must be Federally qualified subsistence users with a positive customary and traditional use determination for the area they want to hunt;

(C) The minor must hunt under the direct immediate supervision of the accompanying adult, who is responsible for ensuring that all legal requirements are met;

(D) Only one animal may be harvested with this permit. The sheep harvested will count against the harvest limits of both the minor and accompanying adult.

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 3 bears .....	July 1–June 30.
Brown Bear: 1 bear .....	Aug. 10–June 15.
Caribou .....	No open season.
Sheep:	
1 sheep .....	Aug. 10–Sept. 20.
1 sheep by Federal registration permit only by persons 60 years of age or older .....	Sept. 21–Oct. 20.
Goat:	
Unit 11—that portion within the Wrangell-St. Elias National Park and Preserve that is bounded by the Chitina and Nizina rivers on the south, the Kennicott River and glacier on the southeast, and the Root Glacier on the east—1 goat by Federal registration permit only.	Aug. 25–Dec. 31.
Unit 11—the remainder of the Wrangell-St. Elias National Park and Preserve—1 goat by Federal registration permit only.	Aug. 10–Dec. 31.
Unit 11—that portion outside of the Wrangell-St. Elias National Park and Preserve .....	No open season.
Federal public lands will be closed by announcement of the Superintendent, Wrangell-St. Elias National Park and Preserve to the harvest of goats when a total of 45 goats has been harvested between Federal and State hunts.	
Moose: 1 antlered bull by Federal registration permit only .....	Aug 20–Sept. 20.

Harvest limits	Open season
Muskrat: No limit .....	Sept. 20–Jun. 10.
Beaver: 1 beaver per day, 1 in possession .....	June 1–Oct. 10.
Coyote: 10 coyotes .....	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe): No limit .....	July 1–June 30.
Lynx: 2 lynx .....	Nov. 10–Feb. 28.
Wolf: 10 wolves .....	Aug. 10–Apr. 30.
Wolverine: 1 wolverine .....	Sept. 1–Jan. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession .....	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession .....	Aug. 10–Mar. 31.
<b>Trapping</b>	
Beaver: No limit .....	Sept. 25–May 31.
Coyote: No limit .....	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Nov. 10–Feb. 28.
Lynx: No limit .....	Nov. 10–Feb. 28.
Marten: No limit .....	Nov. 10–Feb. 28.
Mink and Weasel: No limit .....	Nov. 10–Feb. 28.
Muskrat: No limit .....	Nov. 10–June 10.
Otter: No limit .....	Nov. 10–Mar. 31.
Wolf: No limit .....	Nov. 10–Mar. 31.
Wolverine: No limit .....	Nov. 10–Feb. 28.

(12) *Unit 12.* Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30; you may use bait to hunt wolves on FWS and BLM lands;

(B) You may not use a steel trap, or a snare using cable smaller than 3/32 inch diameter to trap coyotes or wolves in Unit 12 during April and October;

(C) One moose without calf may be taken from June 20–July 31 in the

Wrangell-St. Elias National Park and Preserve in Unit 11 or 12 for the Batzulnetas Culture Camp. Two hunters from either Chistochina or Mentasta Village may be designated by the Mt. Sanford Tribal Consortium to receive the Federal subsistence harvest permit. The permit may be obtained from a Wrangell-St. Elias National Park and Preserve office.

(ii) A joint permit may be issued to a pair of a minor and an elder to hunt sheep during the Sept. 21–Oct. 20 hunt. The following conditions apply:

(A) The permittees must be a minor aged 8 to 15 years old and an

accompanying adult 60 years of age or older;

(B) Both the elder and the minor must be Federally qualified subsistence users with a positive customary and traditional use determination for the area they want to hunt;

(C) The minor must hunt under the direct immediate supervision of the accompanying adult, who is responsible for ensuring that all legal requirements are met;

(D) Only one animal may be harvested with this permit. The sheep harvested will count against the harvest limits of both the minor and accompanying adult.

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 3 bears .....	July 1–June 30.
Brown Bear: 1 bear .....	Aug. 10–June 30.
Caribou:	
Unit 12—that portion of the Nabesna River drainage within the Wrangell-St. Elias National Park and Preserve and all Federal lands south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—All hunting of caribou is prohibited on Federal public lands.	No open season.
Unit 12—remainder—1 bull .....	Sept. 1–20.
Unit 12—remainder—1 caribou may be taken by a Federal registration permit during a winter season to be announced. Dates for a winter season to occur between Oct. 1 and Apr. 30 and sex of animal to be taken will be announced by Tetlin National Wildlife Refuge Manager in consultation with Wrangell-St. Elias National Park and Preserve Superintendent, Alaska Department of Fish and Game area biologists, and Chairs of the Eastern Interior Regional Advisory Council and Upper Tanana/Fortymile Fish and Game Advisory Committee.	Winter season to be announced.
Sheep:	
Unit 12—1 ram with full curl or larger horn .....	Aug. 10–Sept. 20.
Unit 12—that portion within Wrangell-St. Elias National Park and Preserve—1 ram with full curl horn or larger if Federal registration permit only by persons 60 years of age or older.	Sept. 21–Oct. 20.
Moose:	
Unit 12—that portion within the Tetlin National Wildlife Refuge and those lands within the Wrangell-St. Elias National Preserve north and east of a line formed by the Pickerel Lake Winter Trail from the Canadian border to Pickerel Lake—1 antlered bull. The Nov.–Dec. season is open by Federal registration permit only.	Aug. 24–28. Sept. 8–17.
Unit 12—that portion east of the Nabesna River and Nabesna Glacier, and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull.	Nov. 20–Dec. 10.
Unit 12—remainder—1 antlered bull with spike/fork antlers .....	Aug. 24–Sept. 30.
Unit 12—remainder—1 antlered bull with spike/fork antlers .....	Aug. 15–23.

Harvest limits	Open season
Unit 12—remainder—1 antlered bull .....	Aug. 24–28. Sept. 1–17. Sept. 20–May 15.
Beaver: Unit 12—Wrangell-Saint Elias National Park and Preserve—6 beaver per season. Meat from harvested beaver must be salvaged for human consumption.	
Coyote: 10 coyotes .....	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe): No limit .....	July 1–June 30.
Lynx: 2 lynx .....	Nov. 1–Mar. 15.
Wolf: 10 wolves .....	Aug. 10–Apr. 30.
Wolverine: 1 wolverine .....	Sept. 1–Mar. 31
Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession .....	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession .....	Aug. 10–Apr. 30.
<b>Trapping</b>	
Beaver: 15 beaver per season. Only firearms may be used during Sept. 20–Oct. 31 and Apr. 16–May 15, to take up to 6 beaver. Only traps or snares may be used Nov. 1–Apr. 15. The total annual harvest limit for beaver is 15, of which no more than 6 may be taken by firearm under trapping or hunting regulations. Meat from beaver harvested by firearm must be salvaged for human consumption.	Sept. 20–May 15.
Coyote: No limit .....	Oct. 15–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Nov. 1–Feb. 28.
Lynx: No limit; however, no more than 5 lynx may be taken between Nov. 1 and Nov. 30 .....	Nov. 1–Dec. 31.
Marten: No limit .....	Nov. 1–Feb. 28.
Mink and Weasel: No limit .....	Nov. 1–Feb. 28.
Muskrat: No limit .....	Sept. 20–June 10.
Otter: No limit .....	Nov. 1–Apr. 15.
Wolf: No limit .....	Oct. 1–Apr. 30.
Wolverine: No limit .....	Nov. 1–Feb. 28.

(13) *Unit 13.* (i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north and east bank of the Talkeetna River including the Talkeetna River to its confluence with Clear Creek, the eastside drainages of a line going up the south bank of Clear Creek to the first unnamed creek on the south, then up that creek to lake 4408, along the northeast shore of lake 4408, then southeast in a straight line to the northern most fork of the Chickaloon River; the drainages into the east bank

of the Chickaloon River below the line from lake 4408; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13A consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13B consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and

Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13C consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13D consists of that portion of Unit 13 south of Unit 13A;

(E) Unit 13E consists of the remainder of Unit 13.

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (m)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) You may not use motorized vehicles or pack animals for hunting from Aug. 5–25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle benchmark Miller, then west to include all drainages of Augustana Creek and



Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Cantwell Glacier, then west along the north bank of the Cantwell Glacier and Miller Creek to the Delta River;

(C) Except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Middle Fork trails, or other trails designated by the Board, you may not use motorized vehicles for subsistence hunting in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13B bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Middle Fork Trail at approximately Mile

170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning;

(D) You may not use any motorized vehicle or pack animal for hunting, including the transportation of hunters, their hunting gear, and/or parts of game from July 26–September 30 in the Tonsina Controlled Use Area. The Tonsina Controlled Use Area consists of that portion of Unit 13D bounded on the west by the Richardson Highway from the Tiekkel River to the Tonsina River at Tonsina, on the north along the south bank of the Tonsina River to where the Edgerton Highway crosses the Tonsina River, then along the Edgerton Highway to Chitina, on the east by the Copper River from Chitina to the Tiekkel River, and on the south by the north bank of the Tiekkel River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) Upon written request by the Camp Director to the Glennallen Field Office, 2 caribou, sex to be determined by the Glennallen Field Office Manager of the BLM, may be taken from Aug. 10–Sept. 30 or Oct. 21–Mar. 31 by Federal

registration permit for the Hudson Lake Residential Treatment Camp. Additionally, 1 bull moose may be taken Aug. 1–Sept. 20. The animals may be taken by any Federally qualified hunter designated by the Camp Director. The hunter must have in his/her possession the permit and a designated hunter permit during all periods that are being hunted;

(C) Upon written request from the Ahtna Heritage Foundation to the Glennallen Field Office, either 1 bull moose or 2 caribou, sex to be determined by the Glennallen Field Office Manager of the Bureau of Land Management, may be taken from Aug. 1–Sept. 20 for 1 moose or Aug. 10–Sept. 20 for 2 caribou by Federal registration permit for the Ahtna Heritage Foundation’s culture camp. The permit will expire on September 20 or when the camp closes, whichever comes first. No combination of caribou and moose is allowed. The animals may be taken by any Federally qualified hunter designated by the Camp Director. The hunter must have in his/her possession the permit and a designated hunter permit during all periods that are being hunted.

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 3 bears .....	July 1–June 30.
Brown Bear: 1 bear. Bears taken within Denali National Park must be sealed within 5 days of harvest. That portion within Denali National Park will be closed by announcement of the Superintendent after 4 bears have been harvested.	Aug. 10–May 31.
Caribou:	
Unit 13A and 13B—2 caribou by Federal registration permit only. The sex of animals that may be taken will be announced by the Glennallen Field Office Manager of the Bureau of Land Management in consultation with the Alaska Department of Fish and Game area biologist and Chairs of the Eastern Interior Regional Advisory Council and the Southcentral Regional Advisory Council.	Aug. 10–Sept. 30. Oct. 21–Mar. 31.
Unit 13—remainder—2 bulls by Federal registration permit only .....	Aug. 10–Sept. 30. Oct. 21–Mar. 31.
You may not hunt within the Trans-Alaska Oil Pipeline right-of-way. The right-of-way is the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline..	
Sheep: Unit 13, excluding Unit 13D and the Tok Management Area and Delta Controlled Use Area—1 ram with 7/8 curl or larger horn.	Aug. 10–Sept. 20.
Moose:	
Unit 13E—1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household ..	Aug. 1–Sept. 20.
Unit 13—remainder—1 antlered bull moose by Federal registration permit only .....	Aug. 1–Sept. 20.
Beaver: 1 beaver per day, 1 in possession .....	June 15–Sept. 10.
Coyote: 10 coyotes .....	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe): No limit .....	July 1–June 30.
Lynx: 2 lynx .....	Nov. 10–Feb. 28.
Wolf: 10 wolves .....	Aug. 10–Apr. 30.
Wolverine: 1 wolverine .....	Sept. 1–Jan. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession .....	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession .....	Aug. 10–Mar. 31.
<b>Trapping</b>	
Beaver: No limit .....	Sept. 25–May 31.
Coyote: No limit .....	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Nov. 10–Feb. 28.
Lynx: No limit .....	Nov. 10–Feb. 28.
Marten: Unit 13—No limit .....	Nov. 10–Feb. 28.
Mink and Weasel: No limit .....	Nov. 10–Feb. 28.
Muskrat: No limit .....	Sept. 25–June 10.

Harvest limits	Open season
Otter: No limit .....	Nov. 10–Mar. 31.
Wolf: No limit .....	Oct. 15–Apr. 30.
Wolverine: No limit .....	Nov. 10–Jan. 31.

(14) *Unit 14.* (i) Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south and west bank of the Talkeetna River to its confluence with Clear Creek, the west side drainages of a line going up the south bank of Clear Creek to the first unnamed creek on the south, then up that creek to lake 4408, along the northeast shore of lake 4408, then southeast in a straight line to the

northernmost fork of the Chickaloon River:  
 (A) Unit 14A consists of drainages in Unit 14 bounded on the west by the east bank of the Susitna River, on the north by the north bank of Willow Creek and Peters Creek to its headwaters, then east along the hydrologic divide separating the Susitna River and Knik Arm drainages to the outlet creek at lake 4408, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;  
 (B) Unit 14B consists of that portion of Unit 14 north of Unit 14A;

(C) Unit 14C consists of that portion of Unit 14 south of Unit 14A.  
 (ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:  
 (A) You may not take wildlife for subsistence uses in the Fort Richardson and Elmendorf Air Force Base Management Areas, consisting of the Fort Richardson and Elmendorf Military Reservations;  
 (B) You may not take wildlife for subsistence uses in the Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek.  
 (iii) Unit-specific regulations:

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: Unit 14C—1 bear .....	Jul. 1–Jun. 30.
Beaver: Unit 14C—1 beaver per day, 1 in possession .....	May 15–Oct. 31.
Coyote: Unit 14C—2 coyotes .....	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): Unit 14C—2 foxes .....	Nov. 1–Feb. 15.
Hare (Snowshoe): Unit 14C—5 hares per day .....	Sept. 8–Apr. 30.
Lynx: Unit 14C—2 lynx .....	Dec. 1–Jan. 31.
Wolf: Unit 14C—5 wolves .....	Aug. 10–Apr. 30.
Wolverine: Unit 14C—1 wolverine .....	Sept. 1–Mar. 31.
Grouse (Spruce and Ruffed): Unit 14C—5 per day, 10 in possession .....	Sept. 8–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): Unit 14C—10 per day, 20 in possession .....	Sept. 8–Mar. 31.
<b>Trapping</b>	
Beaver: Unit 14C—that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season.	Dec. 1–Apr. 15.
Coyote: Unit 14C—No limit .....	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): Unit 14C—1 fox .....	Nov. 10–Feb. 28.
Lynx: Unit 14C—No limit .....	Dec. 15–Jan. 31.
Marten: Unit 14C—No limit .....	Nov. 10–Jan. 31.
Mink and Weasel: Unit 14C—No limit .....	Nov. 10–Jan. 31.
Muskrat: Unit 14C—No limit .....	Nov. 10–May 15.
Otter: Unit 14C—No limit .....	Nov. 10–Feb. 28.
Wolf: Unit 14C—No limit .....	Nov. 10–Feb. 28.
Wolverine: Unit 14C—No limit .....	Nov. 10–Feb. 28.

(15) *Unit 15.* (i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet, and Turnagain Arm from Gore Point to the point where longitude line 150°00' W. crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150°00' W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west

of the Chugach National Forest boundary:  
 (A) Unit 15A consists of that portion of Unit 15 north of the north bank of the Kenai River and the north shore of Skilak Lake;  
 (B) Unit 15B consists of that portion of Unit 15 south of the north bank of the Kenai River and the north shore of Skilak Lake, and north of the north bank of the Kasilof River, the north shore of Tustumena Lake, Glacier Creek, and Tustumena Glacier;  
 (C) Unit 15C consists of the remainder of Unit 15.

(ii) You may not take wildlife, except for grouse, ptarmigan, and hares that may be taken only from October 1–March 1 by bow and arrow only, in the Skilak Loop Management Area, which consists of that portion of Unit 15A bounded by a line beginning at the easternmost junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground,

then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its westernmost junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning.

(iii) Unit-specific regulations:

- (A) You may use bait to hunt black bear between April 15 and June 15;
- (B) You may not trap furbearers for subsistence in the Skilak Loop Wildlife Management Area;
- (C) You may not trap marten in that portion of Unit 15B east of the Kenai

River, Skilak Lake, Skilak River, and Skilak Glacier;

- (D) You may not take red fox in Unit 15 by any means other than a steel trap or snare.

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: Units 15A and 15B—2 bears by Federal registration permit Unit 15C—3 bears .....	Jul. 1–Jun. 30.
Brown Bear: Unit 15C—1 bear every four regulatory years by Federal registration permit. The season may be opened or closed by announcement from the Kenai National Wildlife Refuge Manager after consultation with ADF&G and the Chair of the Southcentral Alaska Subsistence Regional Advisory Council.	Oct. 1–Nov. 30, to be announced and Apr. 1–Jun. 15, to be announced.
Moose:	
Unit 15A—Skilak Loop Wildlife Management Area .....	No open season.
Unit 15A—remainder, 15B, and 15C—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 10–Sept. 20.
Units 15B and 15C—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only. The Kenai NWR Refuge Manager is authorized to close the October/November season based on conservation concerns, in consultation with ADF&G and the Chair of the Southcentral Alaska Subsistence Regional Advisory Council.	Oct. 20–Nov. 10.
Coyote: No limit .....	Sept. 1–Apr. 30.
Hare (Snowshoe): No limit .....	July 1–Jun. 30.
Lynx: 2 lynx .....	Nov. 10–Jan. 31.
Wolf: Unit 15—that portion within the Kenai National Wildlife Refuge—2 wolves Unit 15—remainder—5 wolves .....	Aug. 10–Apr. 30. Aug. 10–Apr. 30.
Wolverine: 1 wolverine .....	Sept. 1–Mar. 31.
Grouse (Spruce): 15 per day, 30 in possession .....	Aug. 10–Mar. 31.
Grouse (Ruffed) .....	No open season.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 15A and 15B—20 per day, 40 in possession .....	Aug. 10–Mar. 31.
Unit 15C—20 per day, 40 in possession .....	Aug. 10–Dec. 31.
Unit 15C—5 per day, 10 in possession .....	Jan. 1–Mar. 31.
<b>Trapping</b>	
Beaver: 20 Beaver per season .....	Nov. 10–Mar. 31.
Coyote: No limit .....	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): 1 Fox .....	Nov. 10–Feb. 28.
Lynx: No limit .....	Jan. 1–Jan. 31.
Marten: Unit 15B—that portion east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier .....	No open season.
Remainder of Unit 15—No limit .....	Nov. 10–Jan. 31.
Mink and Weasel: No limit .....	Nov. 10–Jan. 31.
Muskrat: No limit .....	Nov. 10–May 15.
Otter: Unit 15—No limit .....	Nov. 10–Feb. 28.
Wolf: No limit .....	Nov. 10–Mar. 31.
Wolverine: Unit 15B and C—No limit .....	Nov. 10–Feb. 28.

(16) Unit 16. (i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the

Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

- (A) Unit 16A consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;
- (B) Unit 16B consists of the remainder of Unit 16.

(ii) You may not take wildlife for subsistence uses in the Mount McKinley National Park, as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (m)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

- (iii) Unit-specific regulations:
- (A) You may use bait to hunt black bear between April 15 and June 15.
- (B) [Reserved]

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 3 bears .....	July 1–June 30.
Caribou: 1 caribou .....	Aug. 10–Oct. 31.
Moose:	
Unit 16B—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 bull .....	Sept. 1–15.

Harvest limits	Open season
Unit 16B—Denali National Preserve only—1 bull by Federal registration permit. One Federal registration permit for moose issued per household.	Sept. 1–30.
Unit 16B, remainder—1 bull .....	Dec. 1–Feb. 28.
Coyote: 2 coyotes .....	Sept. 1–30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes .....	Dec. 1–Feb. 28.
Hare (Snowshoe): No limit .....	Sept. 1–Apr. 30.
Lynx: 2 lynx .....	Sept. 1–Feb. 15.
Wolf: 5 wolves .....	July 1–Jun. 30.
Wolverine: 1 wolverine .....	Dec. 1–Jan. 31.
Grouse (Spruce and Ruffed): 15 per day, 30 in possession .....	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession .....	Sept. 1–Mar. 31.
<b>Trapping</b>	
Beaver: No limit .....	Aug. 10–Mar. 31.
Coyote: No limit .....	Oct. 10–May 15.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Nov. 10–Mar. 31.
Lynx: No limit .....	Nov. 10–Feb. 28.
Marten: No limit .....	Dec. 15–Jan. 31.
Mink and Weasel: No limit .....	Nov. 10–Feb. 28.
Muskrat: No limit .....	Nov. 10–Jan. 31.
Otter: No limit .....	Nov. 10–Jun. 10.
Wolf: No limit .....	Nov. 10–Mar. 31.
Wolverine: No limit .....	Nov. 10–Mar. 31.
Wolverine: No limit .....	Nov. 10–Feb. 28.

(17) Unit 17. (i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points including Hagemeister Island and the Walrus Islands;

(A) Unit 17A consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17B consists of the Nushagak River drainage upstream from and including the Mulchatna River drainage and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17C consists of the remainder of Unit 17.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legal hunting camps, you may not use any motorized vehicle for hunting ungulates, bears, wolves, and wolverine, including transportation of hunters and parts of ungulates, bear, wolves, or wolverine in the Upper Mulchatna Controlled Use Area consisting of Unit 17B, from Aug. 1–Nov. 1.

(B) [Reserved]

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting;

(C) [Reserved]

(D) If you have a trapping license, you may use a firearm to take beaver in Unit 17 from April 15–May 31. You may not take beaver with a firearm under a trapping license on National Park Service lands.

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 2 bears .....	Aug. 1–May 31.
Brown Bear: Unit 17–1 bear by State registration permit only .....	Sept. 1–May 31.
Caribou:	
Unit 17A—all drainages west of Right Hand Point—3 caribou; however, no more than 1 caribou may be taken from Aug. 1–Nov. 30. The season may be closed and harvest limit reduced for the drainages between the Togiak River and Right Hand Point by announcement of the Togiak National Wildlife Refuge Manager.	Aug. 1–Mar. 31.
Unit 17A and 17C—that portion of 17A and 17C consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—up to 2 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by the residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark’s Point, and Ekuk hunting under these regulations. The harvest objective, harvest limit, and the number of permits available will be announced by the Togiak National Wildlife Refuge Manager after consultation with the Alaska Department of Fish and Game and the Nushagak Peninsula Caribou Planning Committee. Successful hunters must report their harvest to the Togiak National Wildlife Refuge within 24 hours after returning from the field. The season may be closed by announcement of the Togiak National Wildlife Refuge Manager.	Aug. 1–Sept. 30. Dec. 1–Mar. 31.
Unit 17A—remainder and 17C—remainder—selected drainages; a harvest limit of up to 5 caribou will be determined at the time the season is announced.	Season to occur sometime within Aug. 1–Mar. 31 timeframe; season, harvest limit, and hunt area to be announced by the Togiak National Wildlife Refuge Manager.
Unit 17B and 17C—that portion of 17C east of the Wood River and Wood River Lakes—3 caribou; however, no more than 1 caribou may be taken from Aug. 1–Nov. 30.	Aug. 1–Apr. 15.

Harvest limits	Open season
Sheep: 1 ram with full curl or larger horn .....	Aug. 10–Sept. 20.
Moose: Unit 17A—1 bull by State registration permit .....	Aug. 25–Sept. 20.
Unit 17A—that portion that includes the area east of the west shore of Nenevok Lake, east of the west bank of the Kemuk River, and east of the west bank of the Togiak River south from the confluence Togiak and Kemuk Rivers—1 antlered bull by State registration permit. Up to a 14-day season during the period Dec. 1–Jan. 31 may be opened or closed by the Togiak National Wildlife Refuge Manager after consultation with ADF&G and local users.	Winter season to be announced.
Unit 17B—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 bull by State registration permit. During the period Sept. 1–15, a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Unit 17C—that portion that includes the lowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 bull by State registration permit. During the period Sept. 1–15, a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Unit 17B—remainder and 17C—remainder—1 bull by State registration permit. During the period Sept. 1–15, a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15. Dec. 1–31.
Coyote: 2 coyotes .....	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit .....	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes .....	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit .....	July 1–June 30.
Lynx: 2 lynx .....	Nov. 10–Feb. 28.
Wolf: 10 wolves .....	Aug. 10–Apr. 30.
Wolverine: 1 wolverine .....	Sept. 1–Mar. 31.
Grouse (Spruce and Ruffed): 15 per day, 30 in possession .....	Aug. 10–Apr. 30.
Ptarmigan (Rock and Willow): 20 per day, 40 in possession .....	Aug. 10–Apr. 30.
<b>Trapping</b>	
Beaver:	
Unit 17—No limit .....	Oct. 10–Mar. 31.
Unit 17—2 beaver per day. Only firearms may be used .....	Apr. 15–May 31.
Coyote: No limit .....	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit .....	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Nov. 10–Mar. 31.
Lynx: No limit .....	Nov. 10–Mar. 31.
Marten: No limit .....	Nov. 10–Feb. 28.
Mink and Weasel: No limit .....	Nov. 10–Feb. 28.
Muskrat: 2 muskrats .....	Nov. 10–Feb. 28.
Otter: No limit .....	Nov. 10–Mar. 31.
Wolf: No limit .....	Nov. 10–Mar. 31.
Wolverine: No limit .....	Nov. 10–Feb. 28.

(18) *Unit 18.* (i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River.

(ii) In the Kalskag Controlled Use Area, which consists of that portion of Unit 18 bounded by a line from Lower

Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag, you are not allowed to use aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or ungulate, bear, wolf, or wolverine part by aircraft between publicly owned airports in the Controlled Use Area or

between a publicly owned airport within the Area and points outside the Area.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 18 from Apr. 1–Jun. 10;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting;

(C) You may take caribou from a boat moving under power in Unit 18.

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 3 bears .....	July 1–June 30.
Brown Bear: 1 bear by State registration permit only .....	Sept. 1–May 31.
Caribou: 3 caribou; however, no more than 1 caribou may be taken from Aug. 1–Nov. 30 .....	Aug. 1–Mar. 15.
Moose:	
Unit 18—that portion east of a line running from the mouth of the Ishkowiik River to the closest point of Dall Lake, then to the easternmost point of Takslesluk Lake, then along the Kuskokwim River drainage boundary to the Unit 18 border, and then north of and including the Eek River drainage. Federal public lands are closed to the taking of moose by all users.	No open season.
Unit 18—south of and including the Kanektok River drainages to the Goodnews River drainage. Federal public lands are closed to the taking of moose by all users.	No open season.

Harvest limits	Open season
Unit 18—Goodnews River drainage and south to the Unit 18 boundary—1 antlered bull by State registration permit. Any needed closures will be announced by the Togiak National Wildlife Refuge Manager after consultation with BLM, ADF&G, and the Chair of the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council.	Aug. 25–Sept. 20.
Unit 18—that portion north and west of a line from Cape Romanzof to Kusilvak Mountain to Mountain Village and excluding all Yukon River drainages upriver from Mountain Village—1 antlered bull.	Aug 10–Sept. 30.
Unit 18—that portion north and west of a line from Cape Romanzof to Kusilvak Mountain to Mountain Village and excluding all Yukon River drainages upriver from Mountain Village—1 moose. The Yukon Delta NWR Manager may restrict the harvest to only antlered bulls after consultation with the ADF&G and the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council chair.	Dec. 20–Jan. 20.
Unit 18, remainder—1 antlered bull .....	Aug. 10–Sept. 30. Dec. 20–Jan. 10.
Beaver: No limit .....	July 1–June 30.
Coyote: 2 coyotes .....	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes .....	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit .....	July 1–June 30.
Lynx: 2 lynx .....	Nov. 10–Mar. 31.
Wolf: 5 wolves .....	Aug. 10–Apr. 30.
Wolverine: 1 wolverine .....	Sept. 1–Mar. 31.
Grouse (Spruce and Ruffed): 15 per day, 30 in possession .....	Aug. 10–Apr. 30.
Ptarmigan (Rock and Willow): 20 per day, 40 in possession .....	Aug. 10–May 30.
Trapping	
Beaver: No limit .....	July 1–June 30.
Coyote: No limit .....	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit .....	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Nov. 10–Mar. 31.
Lynx: No limit .....	Nov. 10–Mar. 31.
Marten: No limit .....	Nov. 10–Mar. 31.
Mink and Weasel: No limit .....	Nov. 10–Jan. 31.
Muskrat: No limit .....	Nov. 10–June 10.
Otter: No limit .....	Nov. 10–Mar. 31.
Wolf: No limit .....	Nov. 10–Mar. 31.
Wolverine: No limit .....	Nov. 10–Mar. 31.

(19) *Unit 19.* (i) Unit 19 consists of the Kuskokwim River drainage upstream from a straight line drawn between Lower Kalskag and Piamit;

(A) Unit 19A consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19B;

(B) Unit 19B consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19C consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park

boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19D consists of the remainder of Unit 19.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (m)(19) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) In the Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19D upstream from the mouth of the Selatna River, but excluding the Selatna and Black River drainages, to a line extending from Dyckman Mountain on the northern Unit 19D boundary southeast to the 1,610 foot crest of Munsatli Ridge, then

south along Munsatli Ridge to the 2,981 foot peak of Telida Mountain, then northeast to the intersection of the western boundary of Denali National Preserve with the Minchumina-Telida winter trail, then south along the western boundary of Denali National Preserve to the southern boundary of Unit 19D, you may not use aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in those portions of 19A and 19B downstream of and including the Aniak River drainage if you have obtained a State registration permit prior to hunting.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears .....	July 1–June 30.

Harvest limits	Open season
Brown Bear:	
Unit 19A and 19B—those portions which are downstream of and including the Aniak River drainage—1 bear by State registration permit.	Aug. 10–June 30.
Unit 19A, remainder, 19B, remainder, and Unit 19D—1 bear .....	Aug. 10–June 30.
Caribou:	
Unit 19A—north of Kuskokwim River—1 caribou .....	Aug. 10–Sept. 30. Nov. 1–Feb. 28.
Unit 19A—south of the Kuskokwim River and Unit 19B (excluding rural Alaska residents of Lime Village)—3 caribou; however, no more than 1 caribou may be taken from Aug. 1–Nov. 30.	Aug. 1–Apr. 15.
Unit 19C—1 caribou .....	Aug. 10–Oct. 10.
Unit 19D—south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou .....	Aug. 10–Sept. 30. Nov. 1–Jan. 31.
Unit 19D, remainder—1 caribou .....	Aug. 10–Sept. 30.
Unit 19—Residents domiciled in Lime Village only—no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1–Aug. 9. Reporting will be by a community reporting system.	July 1–June 30.
Sheep: 1 ram with 7/8 curl horn or larger .....	Aug. 10–Sept. 20.
Moose:	
Unit 19—Residents of Lime Village only—no individual harvest limit, but a village harvest quota of 28 bulls (including those taken under the State Tier II system). Reporting will be by a community reporting system.	July 1–June 30.
Unit 19A—North of the Kuskokwim River, upstream from but excluding the George River drainage, and south of the Kuskokwim River upstream from and including the Downey Creek drainage, not including the Lime Village Management Area; Federal public lands are closed to the taking of moose.	No open season.
Unit 19A, remainder—1 antlered bull by Federal drawing permit or a State Tier II permit. Federal public lands are closed to the taking of moose except by residents of Tuluksak, Lower Kalskag, Upper Kalskag, Aniak, Chuathbaluk, and Crooked Creek hunting under these regulations. The Refuge Manager of the Yukon Delta NWR, in cooperation with the BLM Field Office Manager, will annually establish the harvest quota and number of permits to be issued in coordination with the State Tier II hunt. If the allowable harvest level is reached before the regular season closing date, the Refuge Manager, in consultation with the BLM Field Office Manager, will announce an early closure of Federal public lands to all moose hunting.	Sept. 1–20.
Unit 19B—1 bull with spike-fork or 50-inch antlers or antlers with 4 or more brow tines on one side .....	Sept. 1–20.
Unit 19C—1 antlered bull .....	Sept. 1–20.
Unit 19C—1 bull by State registration permit .....	Jan. 15–Feb. 15.
Unit 19D—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull.	Sept. 1–30.
Unit 19D—remainder of the Upper Kuskokwim Controlled Use Area—1 bull .....	Sept. 1–30.
Unit 19D, remainder—1 antlered bull .....	Dec. 1–Feb. 28.
	Sept. 1–30.
	Dec. 1–15.
Coyote: 10 coyotes .....	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe): No limit .....	July 1–June 30.
Lynx: 2 lynx .....	Nov. 1–Feb. 28.
Wolf: Unit 19D—10 wolves per day .....	Aug. 10–Apr. 30.
Unit 19, remainder—5 wolves .....	Aug. 10–Apr. 30.
Wolverine: 1 wolverine .....	Sept. 1–Mar. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession .....	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession .....	Aug. 10–Apr. 30.
<b>Trapping</b>	
Beaver: No limit .....	Nov. 1–Jun. 10.
Coyote: No limit .....	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Nov. 1–Mar. 31.
Lynx: No limit .....	Nov. 1–Feb. 28.
Marten: No limit .....	Nov. 1–Feb. 28.
Mink and Weasel: No limit .....	Nov. 1–Feb. 28.
Muskrat: No limit .....	Nov. 1–June 10.
Otter: No limit .....	Nov. 1–Apr. 15.
Wolf: No limit .....	Nov. 1–Apr. 30.
Wolverine: No limit .....	Nov. 1–Mar. 31.

(20) *Unit 20.* (i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages, and the Tanana River

drainage north of Unit 13 and downstream from the east bank of the Robertson River:

(A) Unit 20A consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence

with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(B) Unit 20B consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20C consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20D consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding, the Banner Creek drainage;

(E) Unit 20E consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20F consists of the remainder of Unit 20.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (n)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) You may not use motorized vehicles or pack animals for hunting from Aug. 5–25 in the Delta Controlled Use Area, the boundary of which is defined as: A line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle benchmark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 of the Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) You may not use firearms, snowmobiles, licensed highway vehicles or motorized vehicles, except aircraft and boats, in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending 5 miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living

within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor only for subsistence taking of wildlife;

(D) You may not use any motorized vehicle for hunting from August 5–September 20 in the Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20E bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway; however, this does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport;

(E) You may by permit hunt moose on the Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River 3 miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning;

(F) You may only hunt moose by bow and arrow in the Fairbanks Management Area. The Area consists of that portion of Unit 20B bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie

Creek to Isberg Road, then northeasterly on Isberg Road to Cripple Creek Road, then northeasterly on Cripple Creek Road to the Parks Highway, then north on the Parks Highway to Alder Creek, then westerly to the middle fork of Rosie Creek through section 26 to the Parks Highway, then east along the Parks Highway to Alder Creek, then upstream along Alder Creek to its confluence with Emma Creek, then upstream along Emma Creek to its headwaters, then northerly along the hydrographic divide between Goldstream Creek drainages and Cripple Creek drainages to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to Sheep Creek Road, then north on Sheep Creek Road to Murphy Dome Road, then west on Murphy Dome Road to Old Murphy Dome Road, then east on Old Murphy Dome Road to the Elliot Highway, then south on the Elliot Highway to Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, Davidson Ditch, then southeasterly along the Davidson Ditch to its confluence with the tributary to Goldstream Creek in Section 29, then downstream along the tributary to its confluence with Goldstream Creek, then in a straight line to First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its confluence with Ruby Creek, then upstream along Ruby Creek to Esro Road, then south on Esro Road to Chena Hot Springs Road, then east on Chena Hot Springs Road to Nordale Road, then south on Nordale Road to the Chena River, to its intersection with the Trans-Alaska Pipeline right of way, then southeasterly along the easterly edge of the Trans-Alaska Pipeline right of way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along the Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear from April 15–June 30; you may use bait to hunt wolves on FWS and BLM lands;

(B) You may not use a steel trap, or a snare using cable smaller than  $\frac{3}{32}$  inch diameter to trap coyotes or wolves in Unit 20E during April and October;

(C) Residents of Units 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals at



the request of the Native Village of Tanana only. This three-moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 3 bears .....	July 1–June 30.
Brown Bear:	
Unit 20A–1 bear .....	Sept. 1–May 31.
Unit 20E–1 bear .....	Aug. 10–June 30.
Unit 20, remainder—1 bear .....	Sept. 1–May 31.
Caribou:	
Unit 20E—1 caribou by joint State/Federal registration permit only. Up to 900 caribou may be taken under a State/Federal harvest quota. During the winter season, area closures or hunt restrictions may be announced when Nelchina caribou are present in a mix of more than 1 Nelchina caribou to 15 Fortymile caribou, except when the number of caribou present is low enough that less than 50 Nelchina caribou will be harvested regardless of the mixing ratio for the two herds. The season closures will be announced by the Eastern Interior Field Office Manager, Bureau of Land Management, after consultation with the National Park Service and Alaska Department of Fish and Game.	Aug. 10–Sept. 30. Nov. 1–Feb. 28.
Unit 20F—north of the Yukon River—1 caribou .....	Aug. 10–Mar. 31.
Unit 20F—east of the Dalton Highway and south of the Yukon River—1 caribou; however, cow caribou may be taken only from Nov. 1–March 31. During the November 1–March 31 season, a State registration permit is required.	Aug. 10–Sept. 20. Nov. 1–Mar. 31.
Moose:	
Unit 20A–1 antlered bull .....	Sept. 1–20.
Unit 20B—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only .....	Sept. 1–20. Jan. 10–Feb. 28.
Unit 20B, remainder—1 antlered bull .....	Sept. 1–20.
Unit 20C—that portion within Denali National Park and Preserve west of the Toklat River, excluding lands within Mount McKinley National Park as it existed prior to December 2, 1980—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–30. Nov. 15–Dec. 15.
Unit 20C, remainder—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–30.
Unit 20E—that portion within Yukon–Charley National Preserve—1 bull .....	Aug. 20–Sept. 30.
Unit 20E—that portion drained by the Forty-mile River (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 bull.	Aug. 24–28. Sept. 1–15.
Unit 20F—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only.	Sept. 1–25.
Unit 20F, remainder—1 antlered bull .....	Sept. 1–25. Dec. 1–10.
Beaver: Unit 20E—Yukon-Charley Rivers National Preserve—6 beaver per season. Meat from harvested beaver must be salvaged for human consumption.	Sept. 20–May 15.
Coyote: 10 coyotes .....	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe): No limit .....	July 1–June 30.
Lynx:	
Unit 20A, 20B, and that portion of 20C east of the Teklanika River—2 lynx .....	Dec. 1–Jan. 31.
Unit 20E—2 lynx .....	Nov. 1–Jan. 31.
Unit 20, remainder—2 lynx .....	Dec. 1–Jan. 31.
Muskrat:	
Unit 20E, that portion within Yukon-Charley Rivers National Preserve—No limit .....	Sept. 20–June 10.
Unit 20, remainder .....	No open season.
Wolf: 10 wolves .....	Aug. 10–Apr. 30.
Wolverine: 1 wolverine .....	Sept. 1–Mar. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed): Units 20A, 20B, 20C, 20E, and 20F—15 per day, 30 in possession .....	Aug. 10–Mar. 31.
Ptarmigan (Rock and Willow):	
Unit 20—those portions within 5 miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Unit 20, remainder—20 per day, 40 in possession .....	Aug. 10–Apr. 30.
<b>Trapping</b>	
Beaver:	
Units 20A, 20B, 20C, and 20F—No limit .....	Nov. 1–Apr. 15.
Unit 20E—25 beaver per season. Only firearms may be used during Sept. 20–Oct. 31 and Apr. 16–May 15, to take up to 6 beaver. Only traps or snares may be used Nov. 1–Apr. 15. The total annual harvest limit for beaver is 25, of which no more than 6 may be taken by firearm under trapping or hunting regulations. Meat from beaver harvested by firearm must be salvaged for human consumption.	Sept. 20–May 15.
Coyote:	
Unit 20E—No limit .....	Oct. 15–Apr. 30.
Unit 20, remainder—No limit .....	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Nov. 1–Feb. 28.
Lynx:	
Unit 20A, 20B, and 20C east of the Teklanika River—No limit .....	Dec. 15–Feb. 15.
Unit 20E—No limit; however, no more than 5 lynx may be taken between Nov. 1 and Nov. 30 .....	Nov. 1–Dec. 31.

Harvest limits	Open season
Unit 20F and 20C—remainder—No limit .....	Nov. 1–Feb. 28.
Marten: No limit .....	Nov. 1–Feb. 28.
Mink and Weasel: No limit .....	Nov. 1–Feb. 28.
Muskrat:	
Unit 20E—No limit .....	Sept. 20–June 10.
Unit 20, remainder—No limit .....	Nov. 1–June 10.
Otter: No limit .....	Nov. 1–Apr. 15.
Wolf:	
Unit 20A, 20B, 20C, & 20F—No limit .....	Nov. 1–Apr. 30.
Unit 20E—No limit .....	Oct. 1–Apr. 30.
Wolverine: No limit .....	Nov. 1–Feb. 28.

(21) *Unit 21.* (i) Unit 21 consists of drainages into the Yukon River upstream from Paimiut to, but not including, the Tozitna River drainage on the north bank, and to, but not including, the Tanana River drainage on the south bank; and excluding the Koyukuk River drainage upstream from the Dulbi River drainage:

(A) Unit 21A consists of the Innoko River drainage upstream from and including the Iditarod River drainage;

(B) Unit 21B consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21C consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21D consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21E consists of the Yukon River drainage from Paimiut upstream to, but not including, the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Unit 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk at 64°52.58' N. lat., 157°43.10' W. long., then northerly to the confluences of the Honhosa and Kateel Rivers at 65°28.42' N. lat., 157°44.89' W. long., then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57' N. lat.,

156°41' W. long.) at 65°56.66' N. lat., 156°40.81' W. long., then easterly to the confluence of the forks of the Dakli River at 66°02.56' N. lat., 156°12.71' W. long., then easterly to the confluence of McLanes Creek and the Hogatza River at 66°00.31' N. lat., 155°18.57' W. long., then southwesterly to the crest of Hochandochtla Mountain at 65°31.87' N. lat., 154°52.18' W. long., then southwest to the mouth of Cottonwood Creek at 65°13.00' N. lat., 156°06.43' W. long., then southwest to Bishop Rock (Yistletaw) at 64°49.35' N. lat., 157°21.73' W. long., then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G-operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including

transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) In Unit 21D, you may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting. Aircraft may not be used in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30; and in the Koyukuk Controlled Use Area, you may also use bait to hunt black bear between September 1 and September 25;

(B) If you have a trapping license, you may use a firearm to take beaver in Unit 21(E) from Nov. 1–June 10;

(C) The residents of Units 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State;

(D) The residents of Unit 21 may take up to three moose per regulatory year for the celebration known as the Kaltag/Nulato Stickdance, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Kaltag or Nulato. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 3 bears .....	July 1–June 30.
Brown Bear:	
Unit 21D—1 bear by State registration permit only .....	Aug. 10–June 30.
Unit 21, remainder—1 bear .....	Aug. 10–June 30.
Caribou:	
Unit 21A—1 caribou .....	Aug. 10–Sept. 30. Dec. 10–Dec. 20.
Unit 21B—that portion north of the Yukon River and downstream from Ukawutni Creek .....	No open season.
Unit 21C—the Dulbi and Melozitna River drainages downstream from Big Creek .....	No open season.
Unit 21B remainder, 21C remainder, and 21E—1 caribou .....	Aug. 10–Sept. 30.
Unit 21D—north of the Yukon River and east of the Koyukuk River-caribou may be taken during a winter season to be announced by the Refuge Manager of the Koyukuk/Nowitna National Wildlife Refuge Manager and the BLM Central Yukon Field Office Manager, in consultation with ADF&G and the Chairs of the Western Interior Subsistence Regional Advisory Council, and the Middle Yukon and Ruby Fish and Game Advisory Committees.	Winter season to be announced.
Unit 21D, remainder—5 caribou per day; however, cow caribou may not be taken May 16–June 30 .....	July 1–June 30.
Moose:	
Unit 21B—that part of the Nowitna River drainage downstream from and including the Little Mud River drainage-1 bull. A State registration permit is required from Sept. 5–25. A Federal registration permit is required from Sept. 26–Oct. 1.	Sept. 5–Oct. 1.
Unit 21B—that part of the Nowitna River drainage downstream from and including the Little Mud River drainage-1 antlered bull. A Federal registration permit is required during the 5-day season and will be limited to one per household. The 5-day season may be announced by the Koyukuk/Nowitna National Wildlife Refuge Manager after consultation with the ADF&G and the Chairs of the Western Interior Regional Advisory Council and the Ruby Fish and Game Advisory Committee.	Five-day season to be announced between Dec. 1 and March 31.
Unit 21A and 21B, remainder—1 bull .....	Aug. 20–Sept. 25. Nov. 1–30.
Unit 21C—1 antlered bull .....	Sept. 5–25.
Unit 21D—Koyukuk Controlled Use Area-1 moose; however, antlerless moose may be taken only during Aug. 27–31 and the Mar. 1–5 season if authorized by announcement by the Koyukuk/Nowitna National Wildlife Refuge Manager. Harvest of cow moose accompanied by calves is prohibited. During the Aug. 27–Sept. 20 season a State registration permit is required. During the Mar. 1–5 season a Federal registration permit is required. Announcement for the antlerless moose seasons and cow quotas will be made after consultation with the ADF&G area biologist and the Chairs of the Western Interior Regional Advisory Council and Middle Yukon Fish and Game Advisory Committee.	Aug. 27–Sept. 20. Mar. 1–5 season to be announced.
Unit 21D, remainder—1 moose; however, antlerless moose may be taken only during Sept. 21–25 and the Mar. 1–5 season if authorized jointly by the Koyukuk/Nowitna National Wildlife Refuge Manager and the Central Yukon Field Office Manager, Bureau of Land Management. Harvest of cow moose accompanied by calves is prohibited. During the Aug. 22–31 and Sept. 5–25 seasons, a State registration permit is required. During the Mar. 1–5 season a Federal registration permit is required. Announcement for the antlerless moose seasons and cow quotas will be made after consultation with the ADF&G area biologist and the Chairs of the Western Interior Regional Advisory Council and the Middle Yukon Fish and Game Advisory Committee.	Aug. 22–31. Sept. 5–25. Mar. 1–5 season to be announced.
Unit 21E—1 moose; however, only bulls may be taken from Aug. 20–Sept. 25; moose may not be taken within one-half mile of the Innoko or Yukon River during the February season.	Aug. 20–Sept. 25. Feb. 1–10.
Beaver:	
Unit 21E—No limit .....	Nov. 1–June 10.
Unit 21, remainder .....	No open season.
Coyote: 10 coyotes .....	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit .....	July 1–June 30.
Lynx: 2 lynx .....	Nov. 1–Feb. 28.
Wolf: 5 wolves .....	Aug. 10–Apr. 30.
Wolverine: 1 wolverine .....	Sept. 1–Mar. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession .....	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession .....	Aug. 10–Apr. 30.
<b>Trapping</b>	
Beaver: No limit .....	Nov. 1–June 10.
Coyote: No limit .....	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Nov. 1–Feb. 28.
Lynx: No limit .....	Nov. 1–Feb. 28.
Marten: No limit .....	Nov. 1–Feb. 28.
Mink and Weasel: No limit .....	Nov. 1–Feb. 28.
Muskrat: No limit .....	Nov. 1–June 10.
Otter: No limit .....	Nov. 1–Apr. 15.
Wolf: No limit .....	Nov. 1–Apr. 30.
Wolverine: No limit .....	Nov. 1–Mar. 31.

(22) Unit 22. (i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the

Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22A consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22B consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22C consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22D consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York and St. Lawrence Island;

(E) Unit 22E consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomed Island and Fairway Rock.

(ii) You may hunt brown bear by State registration permit in lieu of a resident

tag if you have obtained a State registration permit prior to hunting. Aircraft may not be used in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 22 during the established seasons;

(B) Coyote, incidentally taken with a trap or snare intended for red fox or wolf, may be used for subsistence purposes;

(C) A snowmachine may be used to position a hunter to select individual caribou for harvest provided that the animals are not shot from a moving snowmachine;

(D) The taking of one bull moose and one musk ox by the community of Wales is allowed for the celebration of

the Kingikmiut Dance Festival under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Wales. The harvest may only occur between January 1 and March 15 in Unit 22E for a bull moose and in Unit 22E for a musk ox. The harvest will count against any established quota for the area;

(E) A Federally qualified subsistence user (recipient) may designate another Federally qualified subsistence user to take musk oxen on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must get a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients in the course of a season, but have no more than two harvest limits in his/her possession at any one time, except in Unit 22E where a resident of Wales or Shishmaref acting as a designated hunter may hunt for any number of recipients, but have no more than four harvest limits in his/her possession at any one time.

Harvest limits	Open season
<b>Hunting</b>	
Black Bear:	
Unit 22A and 22B—3 bears .....	Jul. 1—Jun. 30.
Unit 22, remainder .....	No open season.
Brown Bear:	
Unit 22A, 22B, 22D, and 22E—1 bear by State registration permit only .....	Aug. 1—May 31.
Unit 22C—1 bear by State registration permit only .....	Aug. 1—Oct. 31. May 10—25.
Caribou:	
Unit 22B west of Golovin Bay and west of a line along the west bank of the Fish and Niukluk Rivers and excluding the Libby River drainage—5 caribou per day.	Oct. 1—Apr. 30. May 1—Sept. 30, a season may be opened by announcement by the Anchorage Field Office Manager of the BLM, in consultation with ADF&G.
Units 22A, 22B remainder, that portion of Unit 22D in the Kouguruk, Kuzitrin (excluding the Pilgrim River drainage), American, and Agiapuk River Drainages, and Unit 22E, that portion east of and including the Sanaguich River drainage—5 caribou per day; however, cow caribou may not be taken May 16—June 30.	July 1—June 30.
Moose:	
Unit 22A—that portion north of and including the Tagoomenik and Shaktoolik River drainages—1 bull. Federal public lands are closed to hunting except by residents of Unit 22A hunting under these regulations.	Aug. 1—Sept. 30.
Unit 22A—that portion in the Unalakleet drainage and all drainages flowing into Norton Sound north of the Golsovia River drainage and south of the Tagoomenik and Shaktoolik River drainages—Federal public lands are closed to the taking of moose, except that residents of Unalakleet, hunting under these regulations, may take 1 bull by Federal registration permit, administered by the BLM Anchorage Field Office with the authority to close the season in consultation with ADF&G.	Aug. 15—Sept. 14.
Unit 22A, remainder—1 bull. However, during the period Jan. 1—31, only an antlered bull may be taken. Federal public lands are closed to the taking of moose except by residents of Unit 22A hunting under these regulations.	Aug. 1—Sept. 30. Jan. 1—31.
Unit 22B—west of the Darby Mountains—1 bull by State registration permit. Quotas and any needed closures will be announced by the Anchorage Field Office Manager of the BLM, in consultation with NPS and ADF&G. Federal public lands are closed to the taking of moose except by Federally qualified subsistence users hunting under these regulations.	Sept. 1—14.
Unit 22B—west of the Darby Mountains—1 bull by either Federal or State registration permit. Quotas and any needed season closures will be announced by the Anchorage Field Office Manager of the BLM, in consultation with NPS, and ADF&G. Federal public lands are closed to the taking of moose except by residents of White Mountain and Golovin hunting under these regulations.	Jan. 1—31.

Harvest limits	Open season
Unit 22B, remainder—1 bull .....	Aug. 1–Jan. 31.
Unit 22C—1 antlered bull .....	Sept. 1–14.
Unit 22D—that portion within the Kougarok, Kuzitrin, and Pilgrim River drainages—1 bull by State registration permit. Quotas and any needed closures will be announced by the Anchorage Field Office Manager of the BLM, in consultation with NPS and ADF&G. Federal public lands are closed to the taking of moose except by residents of Units 22D and 22C hunting under these regulations.	Sept. 1–14.
Unit 22D—that portion west of the Tisuk River drainage and Canyon Creek—1 bull by State registration permit. Quotas and any needed closures will be announced by the Anchorage Field Office Manager of the BLM, in consultation with NPS and ADF&G.	Sept. 1–14.
Unit 22D—that portion west of the Tisuk River drainage and Canyon Creek—1 bull by Federal registration permit. Quotas and any needed closures will be announced by the Anchorage Field Office Manager of the BLM, in consultation with NPS and ADF&G. Federal public lands are closed to the taking of moose except by residents of Units 22D and 22C hunting under these regulations.	Dec. 1–31.
Unit 22D, remainder—1 bull .....	Aug. 10–Sept. 14.
Unit 22D, remainder—1 moose; however, no person may take a calf or a cow accompanied by a calf .....	Oct. 1–Nov. 30.
Unit 22D, remainder—1 antlered bull .....	Dec. 1–31.
Unit 22E—1 bull. Federal public lands are closed to the taking of moose except by Federally qualified subsistence users hunting under these regulations.	Jan. 1–31.
Unit 22E—1 bull. Federal public lands are closed to the taking of moose except by Federally qualified subsistence users hunting under these regulations.	Aug. 1–Dec. 31.
<b>Musk ox:</b>	
Unit 22B—1 bull by Federal permit or State Tier II permit. Federal public lands are closed to the taking of musk ox except by Federally qualified subsistence users hunting under these regulations. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&G and the BLM Field Office Manager.	Aug.1–Mar. 15.
Unit 22D—that portion west of the Tisuk River drainage and Canyon Creek—1 musk ox by Federal permit or State Tier II permit; however, cows may only be taken during the period Jan. 1–Mar. 15. Federal public lands are closed to the taking of musk ox except by Federally qualified subsistence users hunting under these regulations. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&G and BLM.	Sept.1–Mar. 15.
Unit 22D, remainder—1 musk ox by Federal permit or State Tier II permit; however, cows may only be taken during the period Jan. 1–Mar. 15. Federal public lands are closed to the taking of musk ox except by Federally qualified subsistence users hunting under these regulations. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&G and BLM.	Aug.1–Mar. 15.
Unit 22E—1 musk ox by Federal permit or State permit; however, cows may only be taken during the period Jan. 1–Mar. 15. Federal public lands are closed to the taking of musk ox except by Federally qualified subsistence users hunting under these regulations. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&G and BLM.	Aug. 1–Mar. 15.
Unit 22, remainder .....	No open season.
<b>Beaver:</b>	
Unit 22A, 22B, 22D, and 22E—50 beaver .....	Nov. 1–June 10.
Unit 22, remainder .....	No open season.
Coyote: Federal public lands are closed to all taking of coyotes .....	No open season.
Fox, Arctic (Blue and White Phase): 2 foxes .....	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes .....	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit .....	Sept. 1–Apr. 15.
Lynx: 2 lynx .....	Nov. 1–Apr. 15.
<b>Marten:</b>	
Unit 22A and 22B—No limit .....	Nov. 1–Apr. 15.
Unit 22, remainder .....	No open season.
Mink and Weasel: No limit .....	Nov. 1–Jan. 31.
Otter: No limit .....	Nov. 1–Apr. 15.
Wolf: No limit .....	Nov. 1–Apr. 15.
Wolverine: 3 wolverines .....	Sept. 1–Mar. 31.
Grouse (Spruce): 15 per day, 30 in possession .....	Aug. 10–Apr. 30.
<b>Ptarmigan (Rock and Willow):</b>	
Unit 22A and 22B east of and including the Niukluk River drainage—40 per day, 80 in possession .....	Aug. 10–Apr. 30.
Unit 22E—20 per day, 40 in possession .....	July 15–May 15.
Unit 22, remainder—20 per day, 40 in possession .....	Aug. 10–Apr. 30.
<b>Trapping</b>	
<b>Beaver:</b>	
Unit 22A, 22B, 22D, and 22E—50 beaver .....	Nov. 1–June 10.
Unit 22C .....	No open season.
Coyote: Federal public lands are closed to all taking of coyotes .....	No open season.
Fox, Arctic (Blue and White Phase): No limit .....	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Nov. 1–Apr. 15.
Lynx: No limit .....	Nov. 1–Apr. 15.
Marten: No limit .....	Nov. 1–Apr. 15.
Mink and Weasel: No limit .....	Nov. 1–Jan. 31.
Muskrat: No limit .....	Nov. 1–June 10.
Otter: No limit .....	Nov. 1–Apr. 15.
Wolf: No limit .....	Nov. 1–Apr. 30.
Wolverine: No limit .....	Nov. 1–Apr. 15.

(23) *Unit 23.* (i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine, or for transportation of hunters or harvested species in the Noatak Controlled Use Area for the period August 25–September 15. The Area consists of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Noatak River, and extending upstream to the mouth of Sapun Creek. This closure does not apply to the transportation of hunters or parts of ungulates, bear, wolves, or wolverine by regularly scheduled flights to communities by carriers that normally provide scheduled air service.

(B) [Reserved]

(iii) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State

registration permit prior to hunting. Aircraft may not be used in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may take caribou from a boat moving under power in Unit 23;

(B) In addition to other restrictions on method of take found in this § .26, you may also take swimming caribou with a firearm using rimfire cartridges;

(C) If you have a trapping license, you may take beaver with a firearm in all of Unit 23 from Nov. 1–Jun. 10;

(D) For the Baird and DeLong Mountain sheep hunts—A Federally qualified subsistence user (recipient) may designate another Federally qualified subsistence user to take sheep on his or her behalf unless the recipient

is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for only one recipient in the course of a season and may have both his and the recipients' harvest limits in his/her possession at the same time;

(E) A snowmachine may be used to position a hunter to select individual caribou for harvest provided that the animals are not shot from a moving snowmachine;

(F) A Federally qualified subsistence user (recipient) may designate another Federally qualified subsistence user to take musk oxen on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must get a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients, but have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 3 bears .....	July 1–June 30.
Brown Bear: Unit 23—1 bear by State registration permit .....	Aug. 1–May 31.
Caribou: 15 caribou per day; however, cow caribou may not be taken May 16–June 30 .....	July 1–June 30.
Sheep:	
Unit 23—south of Rabbit Creek, Kyak Creek, and the Noatak River, and west of the Cutler and Redstone Rivers (Baird Mountains)—1 sheep by Federal registration permit. The total allowable harvest of sheep is 21, of which 15 may be rams and 6 may be ewes. Federal public lands are closed to the taking of sheep except by Federally qualified subsistence users hunting under these regulations.	Aug. 10–April 30. If the allowable harvest levels are reached before the regular season closing date, the Superintendent of the Western Arctic National Parklands will announce an early closure.
Unit 23—north of Rabbit Creek, Kyak Creek, and the Noatak River, and west of the Aniak River (DeLong Mountains)—1 sheep by Federal registration permit. The total allowable harvest of sheep for the DeLong Mountains is 8, of which 5 may be rams and 3 may be ewes.	Aug. 10–April 30. If the allowable harvest levels are reached before the regular season closing date, the Superintendent of the Western Arctic National Parklands will announce an early closure.
Unit 23, remainder (Schwatka Mountains)—1 ram with 7/8 curl or larger horn .....	Aug. 10–Sept. 20.
Unit 23, remainder (Schwatka Mountains)—1 sheep .....	Oct. 1–Apr. 30.
Moose:	
Unit 23—that portion north and west of and including the Singoalik River drainage, and all lands draining into the Kukpuk and Ipewik Rivers—1 moose; no person may take a calf or a cow accompanied by a calf.	July 1–Mar. 31.
Unit 23—that portion lying within the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Nov. 1–Mar. 31; no person may take a calf or a cow accompanied by a calf.	Aug. 1–Mar. 31.
Unit 23, remainder—1 moose; no person may take a calf or a cow accompanied by a calf .....	Aug. 1–Mar. 31.
Musk ox:	
Unit 23—south of Kotzebue Sound and west of and including the Buckland River drainage—1 musk ox by Federal permit or State Tier II permit; however, cows may only be taken during the period Jan. 1–Mar. 15. Federal public lands are closed to the taking of musk ox except by Federally qualified subsistence users hunting under these regulations. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&G and BLM.	Aug. 1–Mar. 15.

Harvest limits	Open season
Unit 23—Cape Krusenstern National Monument—1 bull by Federal permit. Annual harvest quotas and any needed closures will be announced by the Superintendent of Western Arctic National Parklands. Cape Krusenstern National Monument is closed to the taking of musk oxen except by resident zone community members with permanent residence within the Monument or the immediately adjacent Napaktuktuk Mountain area, south of latitude 67°05' N and west of longitude 162°30' W hunting under these regulations.	Aug. 1–Mar. 15.
Unit 23, remainder .....	No open season.
Beaver: No limit .....	July 1–June 30.
Coyote: 2 coyotes .....	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit .....	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Sept. 1–Mar. 15.
Hare: (Snowshoe and Tundra): No limit .....	July 1–June 30.
Lynx: 2 lynx .....	Nov. 1–Apr. 15.
Wolf: 15 wolves .....	Oct. 1–Apr. 30.
Wolverine: 1 wolverine .....	Sept. 1–Mar. 31.
Muskrat: No limit .....	July 1–June 30.
Grouse (Spruce and Ruffed): 15 per day, 30 in possession .....	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession .....	Aug. 10–Apr. 30.
<b>Trapping</b>	
Beaver:	
Unit 23—the Kobuk and Selawik River drainages—50 beaver .....	July 1–June 30.
Unit 23, remainder—30 beaver .....	July 1–June 30.
Coyote: No limit .....	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase): No limit .....	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Nov. 1–Apr. 15.
Lynx: No limit .....	Nov. 1–Apr. 15.
Marten: No limit .....	Nov. 1–Apr. 15.
Mink and Weasel: No limit .....	Nov. 1–Jan. 31.
Muskrat: No limit .....	Nov. 1–June 10.
Otter: No limit .....	Nov. 1–Apr. 15.
Wolf: No limit .....	Nov. 1–Apr. 30.
Wolverine: No limit .....	Nov. 1–Apr. 15.

(24) *Unit 24.* (i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage:

(A) Unit 24A consists of the Middle Fork of the Koyukuk River drainage upstream from but not including the Harriet Creek and North Fork Koyukuk River drainages, to the South Fork of the Koyukuk River drainage upstream from Squaw Creek, the Jim River Drainage, the Fish Creek drainage upstream from and including the Bonanza Creek drainage, to the 1,410 ft. peak of the hydrologic divide with the northern fork of the Kanuti Chalatna River at N. Lat. 66°33.303' W. Long. 151°03.637' and following the unnamed northern fork of the Kanuti Chalatna Creek to the confluence of the southern fork of the Kanuti Chalatna River at N. Lat. 66°27.090' W. Long. 151°23.841', 4.2 miles SSW (194 degrees true) of Clawanmenka Lake and following the unnamed southern fork of the Kanuti Chalatna Creek to the hydrologic divide with the Kanuti River drainage at N. Lat. 66°19.789' W. Long. 151°10.102', 3.0 miles ENE (79 degrees true) from the 2,055 ft. peak on that divide, and the Kanuti River drainage upstream from the confluence of an unnamed creek at N. Lat. 66°13.050' W. Long. 151°05.864', 0.9 miles SSE (155 degrees true) of a 1,980 ft. peak on that divide, and

following that unnamed creek to the Unit 24 boundary on the hydrologic divide to the Ray River drainage at N. Lat. 66°03.827' W. Long. 150°49.988' at the 2,920 ft. peak of that divide;

(B) Unit 24B consists of the Koyukuk River Drainage upstream from Dog Island to the Subunit 24A boundary;

(C) Unit 24C consists of the Hogatza River Drainage, the Koyukuk River Drainage upstream from Batza River on the north side of the Koyukuk River and upstream from and including the Indian River Drainage on the south side of the Koyukuk River to the Subunit 24B boundary;

(D) Unit 24D consists of the remainder of Unit 24.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use firearms, snowmobiles, licensed highway vehicles, or motorized vehicles, except aircraft and boats, in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending 5 miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed

highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, and Stevens Village, and residents living within the Corridor may use firearms within the Corridor only for subsistence taking of wildlife;

(B) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(C) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Koyukuk Controlled Use Area, which consists of those portions of Unit 21s and 24 bounded by a line from the north bank of the Yukon River at

Koyukuk at 64°52.58' N. lat., 157°43.10' W. long., then northerly to the confluences of the Honhosa and Kateel Rivers at 65°28.42' N. lat., 157°44.89' W. long., then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57' N. lat., 156°41' W. long.) at 65°56.66' N. lat., 156°40.81' W. long., then easterly to the confluence of the forks of the Dakli River at 66°02.56' N. lat., 156°12.71' W. long., then easterly to the confluence of McLanes Creek and the Hogatza River at 66°00.31' N. lat., 155°18.57' W. long., then southwesterly to the crest of Hochandochla Mountain at 65°31.87' N. lat., 154°52.18' W. long., then southwest to the mouth of Cottonwood Creek at 65°13.00' N. lat., 156°06.43' W. long., then southwest to Bishop Rock (Yistletaw) at 64°49.35' N. lat.,

157°21.73' W. long., then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station.

(iii) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting. You may not use aircraft in any manner for

brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears. However, this prohibition does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:  
 (A) You may use bait to hunt black bear between April 15 and June 30; and in the Koyukuk Controlled Use Area, you may also use bait to hunt black bear between September 1 and September 25;  
 (B) Arctic fox, incidentally taken with a trap or snare intended for red fox, may be used for subsistence purposes.

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 3 bears .....	July 1–June 30.
Brown Bear: Unit 24—1 bear by State registration permit .....	Aug. 10–June 30.
Caribou:	
Unit 24—that portion south of the south bank of the Kanuti River, upstream from and including that portion of the Kanuti-Kilolitna River drainage, bounded by the southeast bank of the Kodosin-Nolitna Creek, then downstream along the east bank of the Kanuti-Kilolitna River to its confluence with the Kanuti River—1 caribou.	Aug. 10–Mar. 31.
Unit 24, remainder—5 caribou per day; however, cow caribou may not be taken May 16–June 30 .....	July 1–June 30.
Sheep:	
Unit 24A and 24B—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person, no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 24A and 24B—(excluding Anaktuvuk Pass residents)—that portion within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 24A—except that portion within the Gates of the Arctic National Park—1 ram with $\frac{7}{8}$ curl or larger horn by Federal registration permit only.	Aug. 20–Sept. 30.
Unit 24, remainder—1 ram with $\frac{7}{8}$ curl or larger horn. ....	Aug. 10–Sept. 20.
Moose:	
Unit 24A—1 antlered bull by Federal registration permit .....	Aug. 25–Oct. 1.
Unit 24B—that portion within the John River Drainage—1 moose .....	Aug. 1–Dec. 31.
Unit 24B—all drainages to the north of the Koyukuk River, except the John River drainage—1 moose; however, antlerless moose may be taken only during the periods Sept. 27–Oct. 1 and Mar. 1–5, if authorized jointly by the Kanuti National Wildlife Refuge Manager, the BLM Field Office Manager, and Gates of the Arctic National Park Superintendent. A Federal registration permit is required for the Sept. 26–Oct. 1 and Mar. 1–5 seasons. Harvest of cows accompanied by calves is prohibited. The announcement will be made after consultation with the ADF&G Area Biologist and Chairs of the Western Interior Alaska Subsistence Regional Advisory Council, the Gates of the Arctic Subsistence Resource Commission, and the Koyukuk River Fish and Game Advisory Committee. Federal public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by Federally qualified subsistence users of Unit 24, Koyukuk, and Galena hunting under these regulations.	Aug. 25–Oct. 1.
Unit 24B, remainder 1 antlered bull. A Federal registration permit is required for the Sept. 26–Oct. 1 season. Federal public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by Federally qualified subsistence users of Unit 24, Koyukuk, and Galena hunting under these regulations.	Aug. 25–Oct. 1.
Unit 24C and 24D—that portion within the Koyukuk Controlled Use Area and Koyukuk National Wildlife Refuge—1 moose; however, antlerless moose may be taken only during Aug. 27–31 and the Mar. 1–5 season, if authorized by announcement by the Koyukuk/Nowitna National Wildlife Refuge Manager and BLM Field Office Manager Central Yukon Field Office Manager. Harvest of cow moose accompanied by calves is prohibited. During the Aug. 27–Sept. 20 season, a State registration permit is required. During the Mar. 1–5 season, a Federal registration permit is required. Announcement for the antlerless moose seasons and cow quotas will be made after consultation with the ADF&G Area Biologist and the Chairs of the Western Interior Alaska Subsistence Regional Advisory Council, and the Middle Yukon and Koyukuk River Fish and Game Advisory Committees.	Aug. 27–Sept. 20. Mar. 1–5 to be announced.
Unit 24C, remainder and Unit 24D, remainder—1 antlered bull. During the Sept. 5–Sept. 25 season, a State registration permit is required.	Aug. 25–Oct. 1.
Coyote: 10 coyotes .....	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe): No limit .....	July 1–June 30.
Lynx: 2 lynx .....	Nov. 1–Feb. 28.
Wolf: 15 wolves; however, no more than 5 wolves may be taken prior to Nov. 1 .....	Aug. 10–Apr. 30.



Harvest limits	Open season
Wolverine: 5 wolverine; however, no more than 1 wolverine may be taken prior to Nov. 1 .....	Sept. 1–Mar. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession .....	Aug. 10–Apr. 30.
Ptarmigan (Rock and Willow): 20 per day, 40 in possession .....	Aug. 10–Apr. 30.
<b>Trapping</b>	
Beaver: No limit .....	Nov. 1–June 10.
Coyote: No limit .....	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Nov. 1–Feb. 28.
Lynx: No limit .....	Nov. 1–Feb. 28.
Marten: No limit .....	Nov. 1–Feb. 28.
Mink and Weasel: No limit .....	Nov. 1–Feb. 28.
Muskrat: No limit .....	Nov. 1–June 10.
Otter: No limit .....	Nov. 1–Apr. 15.
Wolf: No limit .....	Nov. 1–Apr. 30.
Wolverine: No limit .....	Nov. 1–Mar. 31.

(25) *Unit 25.* (i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25A consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjok River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25B consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25C consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20E boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25D consists of the remainder of Unit 25.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use firearms, snowmobiles, licensed highway vehicles or motorized vehicles, except

aircraft and boats in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending 5 miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor only for subsistence taking of wildlife;

(B) The Arctic Village Sheep Management Area consists of that portion of Unit 25A north and west of Arctic Village, which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Red Sheep Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into 2 roughly equal drainages; the boundary follows the easternmost fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 62 miles along the divide to the head waters of the most northerly tributary of Red

Sheep Creek then follows southerly along the divide designating the eastern extreme of the Red Sheep Creek drainage then to the confluence of Red Sheep Creek and the East Fork Chandalar River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30 and between August 1 and September 25; you may use bait to hunt wolves on FWS and BLM lands;

(B) You may take caribou and moose from a boat moving under power in Unit 25;

(C) The taking of bull moose outside the seasons provided in this part for food in memorial potlatches and traditional cultural events is authorized in Unit 25D west provided that:

(1) The person organizing the religious ceremony or cultural event contact the Refuge Manager, Yukon Flats National Wildlife Refuge prior to taking or attempting to take bull moose and provide to the Refuge Manager the name of the decedent, the nature of the ceremony or cultural event, number to be taken, the general area in which the taking will occur;

(2) Each person who takes a bull moose under this section must submit a written report to the Refuge Manager, Yukon Flats National Wildlife Refuge not more than 15 days after the harvest specifying the harvester's name and address, and the date(s) and location(s) of the taking(s);

(3) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in Unit 25D west;

(4) Any moose taken under this provision counts against the annual quota of 60 bulls.

Harvest limits	Open season
<b>Hunting</b>	
Black Bear: 3 bears ..... or 3 bears by State community harvest permit .....	July 1–June 30. July 1–June 30.
Brown Bear: Units 25A and 25B—1 bear ..... Unit 25C—1 bear ..... Unit 25D—1 bear .....	Aug. 10–June 30. Sept. 1–May 31. July 1–June 30.
Caribou: Unit 25C—that portion west of the east bank of the mainstem of Preacher Creek to its confluence with American Creek, then west of the east bank of American Creek—1 caribou; however, cow caribou may be taken only from Nov. 1–Mar. 31. However, during the November 1–March 31 season, a State registration permit is required. Unit 25C, remainder—1 caribou by joint State/Federal registration permit only. Up to 600 caribou may be taken under a State/Federal harvest quota. The season closures will be announced by the Eastern Interior Field Office Manager, Bureau of Land Management, after consultation with the National Park Service and Alaska Department of Fish and Game. Unit 25D—that portion of Unit 25D drained by the west fork of the Dall River west of 150° W. long.—1 bull .....  Unit 25A, 25B, and Unit 25D, remainder—10 caribou .....	Aug. 10–Sept. 20. Nov. 1–Mar. 31.  Aug. 10–Sept. 30. Nov. 1–Feb. 28.  Aug. 10–Sept. 30. Dec. 1–31. July 1–Apr. 30.
Sheep: Unit 25A—that portion within the Dalton Highway Corridor Management Area ..... Units 25A—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Federal public lands, except the drainages of Red Sheep Creek and Cane Creek during the period of Aug. 10–Sept. 20, are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik, and Chalkyitsik hunting under these regulations. Unit 25A, remainder—3 sheep by Federal registration permit only .....	No open season. Aug. 10–Apr. 30.  Aug. 10–Apr. 30.
Moose: Unit 25A—1 antlered bull .....  Unit 25B—that portion within Yukon-Charley National Preserve—1 bull ..... Unit 25B—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull. Unit 25B—that portion, other than Yukon-Charley National Preserve, draining into the north bank of the Yukon River upstream from and including the Kandik River drainage, including the islands in the Yukon River—1 antlered bull. Unit 25B, remainder—1 antlered bull .....  Unit 25C—1 antlered bull ..... Unit 25D (west)—that portion lying west of a line extending from the Unit 25D boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth of Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzic River, then upstream along the west bank of the Hadweenzic River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25D boundary—1 bull by a Federal registration permit. Permits will be available in the following villages: Beaver (25 permits), Birch Creek (10 permits), and Stevens Village (25 permits). Permits for residents of 25D (west) who do not live in one of the three villages will be available by contacting the Yukon Flats National Wildlife Refuge Office in Fairbanks or a local Refuge Information Technician. Moose hunting on public land in Unit 25D (west) is closed at all times except for residents of Unit 25D (west) hunting under these regulations. The moose season will be closed by announcement of the Refuge Manager Yukon Flats NWR when 60 moose have been harvested in the entirety (from Federal and non-Federal lands) of Unit 25D (west). Unit 25D, remainder—1 antlered moose .....	Aug. 25–Sept. 25. Dec. 1–10. Aug. 20–Sept. 30. Aug. 25–Sept. 30. Dec. 1–10. Sept. 5–30. Dec. 1–15.  Aug. 25–Sept. 25. Dec. 1–15. Sept. 1–15. Aug. 25–Feb. 28.        Aug. 25–Sept. 25. Dec. 1–20.
Beaver: Unit 25A, 25B, and 25D—1 beaver per day; 1 in possession ..... Unit 25C .....	Apr. 16–Oct. 31. No open season.
Coyote: 10 coyotes .....	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1. Hare (Snowshoe): No limit .....	Sept. 1–Mar. 15. July 1–June 30.
Lynx: Unit 25C—2 lynx ..... Unit 25, remainder—2 lynx .....	Dec. 1–Jan. 31. Nov. 1–Feb. 28.
Muskrat: Unit 25B and 25C, that portion within Yukon-Charley Rivers National Preserve—No limit ..... Unit 25, remainder .....	Nov. 1–June 10. No open season.
Wolf: Unit 25A—No limit ..... Unit 25, remainder—10 wolves .....	Aug. 10–Apr. 30. Aug. 10–Apr. 30.
Wolverine: 1 wolverine .....	Sept. 1–Mar. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed): Unit 25C—15 per day, 30 in possession ..... Unit 25, remainder—15 per day, 30 in possession .....	Aug. 10–Mar. 31. Aug. 10–Apr. 30.
Ptarmigan (Rock and Willow):	

Harvest limits	Open season
Unit 25C—those portions within 5 miles of Route 6 (Steese Highway)—20 per day, 40 in possession .....	Aug. 10–Mar. 31.
Unit 25, remainder—20 per day, 40 in possession .....	Aug. 10–Apr. 30.
<b>Trapping</b>	
<b>Beaver:</b>	
Unit 25C—No limit .....	Nov. 1–Apr. 15.
Unit 25—remainder—50 beaver .....	Nov. 1–Apr. 15.
<b>Coyote:</b> No limit .....	Nov. 1–Mar. 31.
<b>Fox, Red (including Cross, Black and Silver Phases):</b> No limit .....	Nov. 1–Feb. 28.
<b>Lynx:</b> No limit .....	Nov. 1–Feb. 28.
<b>Marten:</b> No limit .....	Nov. 1–Feb. 28.
<b>Mink and Weasel:</b> No limit .....	Nov. 1–Feb. 28.
<b>Muskrat:</b> No limit .....	Nov. 1–June 10.
<b>Otter:</b> No limit .....	Nov. 1–Apr. 15.
<b>Wolf:</b> No limit .....	Nov. 1–Apr. 30.
<b>Wolverine:</b>	
Unit 25C—No limit .....	Nov. 1–Feb. 28.
Unit 25, remainder—No limit .....	Nov. 1–Mar. 31.

(26) *Unit 26.* (i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border, including the Firth River drainage within Alaska:

(A) Unit 26A consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26B consists of that portion of Unit 26 east of Unit 26A, west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26C consists of the remainder of Unit 26.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose during the periods July 1–Sept. 14 and Jan. 1–Mar. 31 in Unit 26A; however, this does not apply to transportation of moose hunters, their gear, or moose parts by aircraft between publicly owned airports;

(B) You may not use firearms, snowmobiles, licensed highway vehicles or motorized vehicles, except aircraft and boats, in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending 5

miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor only for subsistence taking of wildlife.

(iii) You may hunt brown bear in Unit 26A by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting. You may not use aircraft in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may take caribou from a boat moving under power in Unit 26;

(B) In addition to other restrictions on method of take found in this § \_\_\_\_, 26, you may also take swimming caribou with a firearm using rimfire cartridges;

(C) In Kaktovik, a Federally qualified subsistence user (recipient) may designate another Federally qualified subsistence user to take sheep or musk ox on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(D) For the DeLong Mountain sheep hunts—A Federally qualified subsistence user (recipient) may designate another Federally qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for only one recipient in the course of a season and may have both his and the recipient's harvest limits in his/her possession at the same time.

Harvest limits	Open season
<b>Hunting</b>	
<b>Black Bear:</b> 3 bears .....	July 1–June 30.
<b>Brown Bear:</b>	
Unit 26A—1 bear by State registration permit .....	July 1–May 31.
Unit 26B—1 bear .....	Sept. 1–May 31.
Unit 26 C—1 bear .....	Aug. 10–June 30.
<b>Caribou:</b>	
Unit 26A—10 caribou per day; however, cow caribou may not be taken May 16–June 30 .....	July 1–June 30.
Unit 26B—10 caribou per day; however, cow caribou may be taken only from Oct. 1–Apr. 30 .....	July 1–June 30.
Unit 26C—10 caribou per day .....	July 1–Apr. 30.

Harvest limits	Open season
(You may not transport more than 5 caribou per regulatory year from Unit 26 except to the community of Anaktuvuk Pass.).	
Sheep:	
Unit 26A and 26B—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person, no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 26A—(excluding Anaktuvuk Pass residents)—those portions within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 26A—that portion west of Howard Pass and the Etivluk River (DeLong Mountains)—1 sheep by Federal registration permit. The total allowable harvest of sheep for the DeLong Mountains is 8, of which 5 may be rams and 3 may be ewes.	Aug. 10–April 30. If the allowable harvest levels are reached before the regular season closing date, the Superintendent of the Western Arctic National Parklands will announce an early closure.
Unit 26B—that portion within the Dalton Highway Corridor Management Area—1 ram with $\frac{7}{8}$ curl or larger horn by Federal registration permit only.	Aug. 10–Sept. 20.
Unit 26A, remainder and 26B, remainder—including the Gates of the Arctic National Preserve—1 ram with $\frac{7}{8}$ curl or larger horn.	Aug. 10–Sept. 20.
Unit 26C—3 sheep per regulatory year; the Aug. 10–Sept. 20 season is restricted to 1 ram with $\frac{7}{8}$ curl or larger horn. A Federal registration permit is required for the Oct. 1–Apr. 30 season.	Aug. 10–Sept. 20. Oct. 1–Apr. 30.
Moose:	
Unit 26A—that portion of the Colville River drainage upstream from and including the Anaktuvuk River drainage—1 bull.	Aug. 1–Sept. 14.
Unit 26A—that portion of the Colville River drainage upstream from and including the Anaktuvuk River drainage—1 moose; however, you may not take a calf or a cow accompanied by a calf.	Feb. 15–Apr. 15.
Unit 26A—that portion west of 156°00' W. longitude excluding the Colville River drainage. 1 moose, however, you may not take a calf or a cow accompanied by a calf.	July 1–Sept. 14.
Unit 26A, remainder—1 bul .....	Aug. 1–Sept. 14. Sept. 1–14.
Unit 26B, excluding the Canning River drainage—1 bull .....	July 1–Mar. 31.
Units 26B, remainder and 26C—1 moose by Federal registration permit by residents of Kaktovik only. The harvest quota is 3 moose (2 antlered bulls and 1 of either sex), provided that no more than 2 antlered bulls may be harvested from Unit 26C and cows may not be harvested from Unit 26C. You may not take a cow accompanied by a calf in Unit 26B. Only 3 Federal registration permits will be issued. Federal public lands are closed to the taking of moose except by a Kaktovik resident holding a Federal registration permit and hunting under these regulations.	
Musk ox:	
Unit 26C—1 bull by Federal registration permit only. The number of permits that may be issued only to the residents of the village of Kaktovik will not exceed three percent (3%) of the number of musk oxen counted in Unit 26C during a pre-calving census. Public lands are closed to the taking of musk ox, except by rural Alaska residents of the village of Kaktovik hunting under these regulations.	Jul. 15–Mar. 31.
Coyote: 2 coyotes .....	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes .....	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Units 26A and 26B—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1 .....	Sept. 1–Mar. 15.
Unit 26C—10 foxes .....	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit .....	July 1–June 30.
Lynx: 2 lynx .....	Nov. 1–Apr. 15.
Wolf: 15 wolves .....	Aug. 10–Apr. 30.
Wolverine: 5 wolverine .....	Sept. 1–Mar. 31.
Ptarmigan (Rock and Willow): 20 per day, 40 in possession .....	Aug. 10–Apr. 30.
<b>Trapping</b>	
Coyote: No limit .....	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase): No limit .....	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit .....	Nov. 1–Apr. 15.
Lynx: No limit .....	Nov. 1–Apr. 15.
Marten: No limit .....	Nov. 1–Apr. 15.
Mink and Weasel: No limit .....	Nov. 1–Jan. 31.
Muskrat: No limit .....	Nov. 1–June 10.
Otter: No limit .....	Nov. 1–Apr. 15.
Wolf: No limit .....	Nov. 1–Apr. 30.
Wolverine: No limit .....	Nov. 1–Apr. 15.

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Dated: May 28, 2008.

**Peter J. Probasco,**

*Acting Chair, Federal Subsistence Board.*

Dated: May 28, 2008.

**Steve Kessler,**

*Subsistence Program Leader, USDA-Forest Service.*

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# Federal Register

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**Tuesday,  
June 24, 2008**

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## **Part III**

# **Department of Commerce**

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**National Oceanic and Atmospheric  
Administration**

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**50 CFR Parts 600 and 635**

**Atlantic Highly Migratory Species (HMS);  
Atlantic Shark Management Measures;  
Final Rule**

**Atlantic Highly Migratory Species (HMS);  
Atlantic Shark Management Measures;  
Research Fishery; Notice**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 600 and 635**

[Docket No. 0612242866–8619–02]

RIN 0648–AU89

**Atlantic Highly Migratory Species (HMS); Atlantic Shark Management Measures**

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

**ACTION:** Final rule; fishing season notification.

**SUMMARY:** This final rule implements the management measures described in Final Amendment 2 to the Atlantic HMS Fishery Management Plan (FMP). These management measures are designed to rebuild overfished species and prevent overfishing of Atlantic sharks. These measures include, but are not limited to, reductions in the commercial quotas, adjustments to commercial retention limits, establishment of a shark research fishery, a requirement for commercial vessels to maintain all fins on the shark carcasses through offloading, the establishment of two regional quotas for non-sandbar large coastal sharks (LCS), the establishment of one annual season for commercial shark fishing instead of trimesters, changes in reporting requirements for dealers (including swordfish and tuna dealers), the establishment of additional time/area closures for bottom longline (BLL) fisheries, and changes to the authorized species for recreational fisheries. This rule also establishes the 2008 commercial quota for all Atlantic shark species groups. These changes affect all commercial and recreational shark fishermen and shark dealers on the Atlantic Coast.

**DATES:** This rule is effective on July 24, 2008.

**ADDRESSES:** For copies of Final Amendment 2 to the Highly Migratory Species Fishery Management Plan, the Small Entity Compliance Guide, or other related documents, please write to the Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910, or call at (301) 713–2347 or fax to (301)713–1917. Copies are also available on the HMS website at <http://www.nmfs.noaa.gov/sfa/hms/>.

Written comments regarding the burden-hour estimates or other aspects

of the collection-of-information requirements contained in this final rule may be submitted to the Highly Migratory Species Management Division at (301) 713–2347 or by fax to (301) 713–1917 and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or fax to (202) 395–7285.

**FOR FURTHER INFORMATION CONTACT:** Michael Clark, Karyl Brewster-Geisz, or LeAnn Southward Hogan at 301–713–2347 or by fax at 301–713–1917; or Jackie Wilson at 240–338–3936.

**SUPPLEMENTARY INFORMATION:****Background**

The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Consolidated HMS FMP is implemented by regulations at 50 CFR part 635.

NMFS announced its intent to prepare an environmental impact statement (EIS) on November 7, 2006 (71 FR 65086), and held seven scoping meetings in January 2007 (72 FR 123, January 3, 2007). As described in the notice of intent, based on the results of the 2005 Canadian porbeagle shark stock assessment, the 2006 dusky shark stock assessment, and the 2005/2006 LCS stock assessment, NMFS declared the current status of the LCS complex as unknown, sandbar sharks as overfished with overfishing occurring, the Gulf of Mexico blacktip shark population as not overfished with overfishing not occurring, the Atlantic blacktip shark population as unknown, the dusky shark as overfished with overfishing occurring, and porbeagle sharks as overfished with overfishing not occurring. Where there are overfished/overfishing determinations, under the Magnuson-Stevens Act, NMFS is required to develop management measures to rebuild overfished shark stocks and prevent overfishing.

In March 2007, NMFS presented a pre-draft of the Amendment 2 to the HMS Advisory Panel (72 FR 7860, February 21, 2007). Based in part on the comments received during scoping and from the HMS Advisory Panel, on July 27, 2007, NMFS developed further and then released the draft Amendment 2 to the Consolidated HMS FMP and the associated proposed rule (72 FR 41325; 72 FR 41392). The public comment period was originally scheduled to end on October 10, 2007; however, it was subsequently extended (72 FR 56330, October 3, 2007) and reopened until December 17, 2007 (72 FR 64186, November 15, 2007), to provide the Regional Fishery Management Councils,

the Interstate Marine Fisheries Commissions, and the public additional opportunity to submit comments. In addition to the written comments submitted, the public verbally commented on the proposed rule at five Regional Fishery Management Council meetings (New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, and Caribbean), an Atlantic States Marine Fisheries Commission meeting, ten public hearings, and one HMS Advisory Panel meeting. The summary of the comments received and NMFS' responses are provided below. Based on these public comments, NMFS re-evaluated the preferred alternatives identified in the draft Amendment 2, made changes as outlined in Final Amendment 2, and now releases its final rule as modified after considering public comment.

Consistent with the Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, the objectives for this final rule are to: (1) implement rebuilding plans for sandbar, dusky, and porbeagle sharks; (2) provide an opportunity for the sustainable harvest of blacktip and other sharks, as appropriate; (3) prevent overfishing of Atlantic sharks; (4) analyze BLL time/area closures and take necessary action to maintain or modify the closures, as appropriate; and (5) improve, to the extent practicable, data collections or data collection programs.

The rebuilding plans in Final Amendment 2 to the Consolidated HMS FMP considers the recommendations in the stock assessments to be the best available scientific information on the status of the species and therefore, reflects those recommendations. This includes NMFS establishing rebuilding time periods that are as short as possible, taking into account the status and biology of the stocks and needs of the fishing communities according to National Standard (NS) 1 guidelines.

The 2005/2006 stock assessment for the sandbar shark assumed that sandbar shark fishing mortality from 2005 to 2007 would be maintained at levels similar to 2004 (the last year of data used in the stock assessment was from 2004) and that there would be a constant total allowable catch (TAC) between 2008 and 2070. Using these assumptions, the projections indicated that sandbar sharks would have a 70–percent probability of rebuilding by 2070 with a TAC of 220 mt whole weight (ww) (158 mt dressed weight (dw))/year and a 50–percent probability of rebuilding by 2070 with a TAC of 240 mt ww (172 mt dw)/year. As described in Amendment 2, NMFS used the 70–percent probability of rebuilding to

ensure that the intended results of a management action are actually realized given the life history traits of sandbar sharks.

Under the rebuilding plan, sandbar sharks are separated from the LCS complex, and the base commercial sandbar shark quota is established at 116.6 mt dw/year, which results in a total sandbar shark TAC of 158.3 mt dw (220 mt ww) once other sources of sandbar sharks mortality are included. For the first five years of this rebuilding plan (through 2012), to account for 2007 overharvests, the base commercial quota is reduced to 87.9 mt dw. The adjusted base quota through 2012 includes the amount of quota that would have been available in the 1<sup>st</sup> season of 2008 had NMFS not closed the fishery during that time. In the final rule for the 1<sup>st</sup> season of 2008, NMFS calculated that 78 mt dw (171,959 lb dw) would have been available (November 29, 2007, 72 FR 67580). However, based on updates to the reported landings, NMFS adjusted the 78 mt dw estimate down to 66.2 mt dw (145,944 lb dw). The actual commercial quota available in any particular year may fluctuate based on overharvests and will be published via appropriate rulemaking in the **Federal Register**.

Projections in the dusky shark stock assessment indicated that with the age-structured production model (i.e., baseline scenario), dusky sharks could be rebuilt with a 70-percent probability by the year 2400. Other projections from the three other modeling approaches indicate that rebuilding of dusky sharks will take between 100–400 years. As such, in this final rule, NMFS assumes that the rebuilding timeframe that would be as short as possible for dusky sharks would be at least 100 years. The harvest of dusky sharks has been prohibited since 2000. Despite this fact, dusky sharks are still overfished with overfishing occurring, NMFS believes this is at least partly due to the fact that they are caught as bycatch, predominantly in longline fisheries. Many of the final actions in this rule, such as establishing a shark research fishery with 100 percent observer coverage and decreasing the retention limits of non-sandbar large coastal sharks on all fishing vessels, should reduce dusky shark bycatch. This reduction in bycatch should aid in rebuilding and in collecting additional information to evaluate dusky shark status and catches. In the research fishery, if dusky shark catch is high by a particular vessel or in a particular region, NMFS could stop that vessel's trip(s) or stop all research trips in that region and/or time. Additionally, if

NMFS decides, after reviewing the data from a particular year, NMFS decides that the catch was too high in the research fishery, NMFS could adjust the research protocols and reduce effort or modify gear requirements, as needed. For the non-research fishery trips, NMFS could either reduce the retention limit in an attempt to reduce effort or work with the appropriate Regional Fishery Management Council to reduce bycatch mortality in certain fisheries, or consider other measures, as appropriate.

A stock assessment was conducted for North Atlantic porbeagle sharks in 2005 by the Canadian Department of Fisheries and Oceans. This assessment was reviewed by NMFS scientists who determined it used appropriate methodologies and all available fishery and biological data including U.S. landings and research. As a result of this review, NMFS determined that the assessment constituted the best available science. NMFS also determined that because the stock assessed is a unit stock that extends into U.S. waters, the assessment and its recommendations were appropriate for use in U.S. domestic management. The assessment recommended that there is a 70-percent probability of rebuilding in 100 years if fishing mortality levels are maintained at or below 0.04 (current fishing mortality level). Considering this science, NMFS believes that the rebuilding timeframe that is as short as possible is 100 years, which will allow a TAC of 11.3 mt dw based on current commercial landings of 1.7 mt dw, current commercial discards of 9.5 mt dw, and current recreational landings of 0.1 mt dw. This results in a commercial porbeagle shark quota of 1.7 mt dw.

This final rule does not contain detailed information regarding the management history of Atlantic sharks or the alternatives considered. Those issues are discussed in the preamble of the proposed rule. Additional information can also be found in the Final Amendment 2 to the Consolidated HMS FMP available from NMFS (see **ADDRESSES**). This final rule contains responses to comments received during the public comment period and a description of changes to the rule between proposed and final. The description of the changes to the proposed rule can be found after the response to comment section.

#### Response to Comments

A large number of individuals and groups provided both written and verbal comments on the proposed rule during the 143-day comment period, 10 public hearings, 5 Regional Fishery Management Council meetings, one

Interstate Marine Fisheries Commission meeting, and one HMS Advisory Panel meeting. These comments resulted in numerous changes. The comments are summarized below together with NMFS' responses. All of the comments are grouped together by major issue. There are 16 major issues: Quotas/Species Complexes; Porbeagle Sharks as Prohibited; Retention Limits; Fins on Requirement; Time Area Closures; Reporting; Seasons; Regions; Recreational Measures; Stock Assessment and Fishery Evaluation (SAFE) Report and Stock Assessment Frequency; Research Fishery/Preferred Alternative; Comments on Other Alternative Suites and Management Measures; Science; National Standards; Economic Impacts; and Miscellaneous. The comments are numbered consecutively, starting with 1, at the beginning of each issue.

#### 1. Quotas/Species Complexes

##### a. Quotas

*Comment 1:* The National Marine Fisheries Service (NMFS) should consider reducing the fishing mortality for overfished sandbar sharks.

*Response:* NMFS is taking steps to reduce fishing mortality for overfished sandbar sharks. In particular, NMFS is reducing the base commercial quota for sandbar sharks to 116.6 mt dw. This amount is further reduced to 87.9 mt dw from 2008 through 2012 to account for 2007 overharvests. This is more than an 80-percent reduction in sandbar shark landings compared to the status quo (594.4 mt dw). This base commercial quota of 116.6 mt dw (which is then adjusted for overharvest) combined with estimated discards both within and outside the commercial shark fishery (e.g., including other commercial fisheries and recreational fisheries) is anticipated to keep sandbar mortality below the recommended total allowable catch (TAC) of 158.3 mt dw, which gives this stock a 70-percent probability of rebuilding by 2070, as described in Chapter one of Amendment 2 to the Consolidated HMS FMP.

*Comment 2:* NMFS should have considered Individual Transferable Quotas (ITQs) for the shark fishery in this rulemaking. The quota is just too small for the number of participants. Individual Fishing Quotas (IFQs) or ITQs would accomplish the same objectives as the research fishery. ITQs/IFQs are the fairest, simplest, most rational method for this dilemma. NMFS should switch to an ITQ system with no trip limit, because a lot of times fishermen do not weigh the sharks. Rather, fishermen know their legal trip



limit based on how they fill their fish boxes. An ITQ system with no trip limit would result in fewer dead discards.

*Response:* ITQs may be beneficial in many fisheries, and NMFS may consider developing an IFQ or Limited Access Privilege Programs (LAPPs) for sharks as well as other HMS in the future. NMFS did not consider ITQs to be a reasonable alternative for this rulemaking given the strict 1-year timeline to which NMFS must adhere in setting up a system for rebuilding a fishery under the Magnuson-Stevens Act. Furthermore, overfishing of sharks would have continued during an extensive ITQ development phase, which would have been inconsistent with NMFS' mandate in section 304(e) of the Magnuson-Stevens Act to rebuild overfished stocks. The Magnuson-Stevens Act states that for stocks identified as overfished or having overfishing occurring, the Secretary of Commerce or the relevant Council, as appropriate, shall prepare a fishery management plan, plan amendment, or proposed regulations for the fishery to end overfishing in the fishery and rebuild affected stocks within one year of that determination. NMFS satisfied that timing provision: sandbar sharks and dusky sharks were determined to be overfished with overfishing occurring on November 7, 2006 (71 FR 65086), and NMFS published Draft Amendment 2 to the Consolidated HMS FMP on July 27, 2007 (72 FR 41325). NMFS notes that the 2006 Magnuson-Stevens Fishery Conservation and Management Reauthorization Act amended section 304(e) to include a two-year timing provision for preparation and implementation of actions, and the new provision will be effective July 12, 2009.

Given section 304 and other timing considerations for this action, NMFS did not consider an ITQ system as a reasonable alternative, as it takes several years to properly design an ITQ system that appropriately considers the views of all stakeholders and then to implement such a system. The general requirements for ITQs or LAPPs were included in the 2007 reauthorized Magnuson-Stevens Act (section 303A). Overall, two basic things must be done when implementing a LAPP system: 1) determine who would receive and who can hold the harvest privileges; and 2) define the nature of the harvest privileges. In addition, NMFS is currently establishing referenda requirements for LAPPs (for instance, a particular allocation scheme must be approved by a given level of the industry). In addition, unlike the research fishery, which would allow an individual fisherman to target sharks on

a yearly basis, allocation under an ITQ, IFQ, or LAPP would be for a much longer time period. Because fishermen would have these allocations for a long time, NMFS traditionally works extensively with all stakeholders to devise the best allocation scheme possible for these type of permit programs through workshops and other meetings.

*Comment 3:* NMFS should reconsider how it calculated the non-sandbar Large Coastal Shark (LCS) quota. The non-sandbar LCS quota is low because fishermen were not targeting non-sandbar LCS in the past. They were targeting sandbar sharks. If fishermen had been targeting non-sandbar LCS, historical landings would be much higher, and there would be a larger non-sandbar LCS quota than is currently proposed.

*Response:* NMFS is implementing a larger non-sandbar LCS base quota of 627.8 mt dw outside the shark research fishery based on dealer reports rather than logbooks, as originally proposed. By using dealer reports, NMFS included in its calculations landings outside of NMFS' jurisdiction (e.g., state landings) and thus maintained consistency in establishing the quota with data used in the stock assessments.

In using historical landings reported by shark dealers to calculate the non-sandbar LCS quota, NMFS follows the recommendations of the stock assessments for Gulf of Mexico and Atlantic blacktip shark populations. These stock assessments recommended keeping catch levels the same in the Atlantic region and not increasing catch levels in the Gulf of Mexico region. Basing quotas on dealer reports would cap fishing effort at historical levels and keep stocks in the Gulf of Mexico healthy and stocks in the Atlantic from declining. Setting quotas higher than these levels could have detrimental effects on shark stocks.

*Comment 4:* NMFS should consider allocating the entire sandbar quota to fishermen participating in the research fishery because giving a few sandbar sharks to those outside of the research fishery would not be worth it. NMFS should also consider only allowing fishermen with directed shark permits to participate in the shark fishery.

*Response:* NMFS considered the option discussed in the comment. Under the final action, NMFS is allocating the entire 87.9 mt dw adjusted sandbar quota to the shark research fishery. NMFS will publish a **Federal Register** notice each year, inviting applications from permit holders who are willing to participate in the shark research fishery. Within that

notice, NMFS will publish the selection criteria that NMFS would use to select participants for the research fishery. For example, depending on the research objectives for a given year, NMFS may consider applications from a variety of permit holders, including directed, incidental, and charter/headboat (CHB) permit holders, for participation in the shark research fishery.

*Comment 5:* NMFS should acknowledge that the proposed reduction in quotas is the end of the directed shark fishery. NMFS should ensure that sharks are not discarded and accommodate incidental landings whenever possible.

*Response:* The final actions will likely end the directed shark fishery for certain species. With the reductions in the sandbar quota, the reduction in retention limits, and the prohibition on retaining sandbar sharks outside the research fishery, fishermen with directed shark permits will likely no longer target LCS outside of the research fishery. As described above, these modifications to quotas and retention limits are necessary to end overfishing and rebuild overfished stocks.

However, as suggested by the commenter, NMFS tried to accommodate incidental landings in other fisheries. Under the final action, fishermen can still retain some non-sandbar LCS while they fish for other species (e.g., reef fish and snapper-grouper). A fisherman with a directed shark permit could harvest 33 non-sandbar LCS per trip and a fisherman with an incidental shark permit could land 3 non-sandbar LCS per trip. The trip limit for directed shark permit holders is based, in part, on BLL observer program data from 2005 to 2007. The observer data showed that fishermen with directed shark permits fishing for snapper-grouper kept, on average, 12 sharks per trip. A 33 non-sandbar trip limit should allow fishermen with directed permits to retain sharks (besides sandbar sharks) they catch while targeting other species and should minimize discards. The incidental trip limit is based on what fishermen with incidental permits currently retain under the status quo.

NMFS also considered whether limiting sandbar harvest to the research fishery would increase dead discards or if NMFS needed to include a trip limit for sandbar sharks. Observer data indicate that fishermen targeting species other than sharks (i.e., snapper-grouper) catch, on average, one sandbar shark per trip. Given that sets on trips not targeting sharks are typically shorter in length and duration than sets on trips targeting sharks, it is anticipated that

sandbar sharks would remain on the gear for less time than on trips targeting shark species, and, thus, would have a greater likelihood of being released alive. Therefore, the current trip limits are not anticipated to result in increased dead discards.

*Comment 6:* NMFS needs to take a more a precautionary approach in regard to hammerheads, common thresher sharks, and blacktip sharks in the Atlantic region, which have an unknown stock status; NMFS should follow international organizations such as the International Union for the Conservation of Nature (IUCN), and pay attention to red listed shark species such as hammerheads, dusky, and sand tiger sharks, which would likely be taken (under the quota or as bycatch) in the fishery and are particularly depleted. Considering these factors, as well as NMFS' poor record for shark recovery to date, NMFS should close the commercial shark fishery; NMFS should put a moratorium on LCS fishing in the Atlantic until the stock status of Atlantic blacktip sharks is known; NMFS should only allow fishing for Atlantic blacktip sharks within scientifically derived limits when the population is capable of supporting such exploitation and bycatch of prohibited species is demonstrated to be insignificant.

*Response:* NMFS is implementing management measures based on the latest NMFS-conducted stock assessments for blacktip, dusky, and sandbar sharks, and the LCS complex, which represent the best available peer reviewed science. NMFS is also implementing management measures based on the latest Canadian-based stock assessment for porbeagle sharks, which NMFS determined represents the best available science. The management measures in this final rule are consistent with the rebuilding targets established in these shark stock assessments, and the rebuilding time periods are as short as possible, taking into account the status and biology of the stocks and needs of the fishing communities according to NS 1 guidelines.

In general, shark stock status determinations are based on NMFS-conducted stock assessments. NMFS uses the Southeast Data, Assessment, and Review (SEDAR) process for shark stock assessments, which is open to the public and uses the Center for Independent Experts (CIE) to provide independent peer reviews of assessment results.

These assessments consider landings by other countries such as Mexico and Canada but contain mostly U.S. data. For shark species that may have

substantial landings outside of the United States (e.g., blue shark), NMFS also relies on the results of the Standing Committee for Research and Statistics (SCRS) of the International Commission for the Conservation of Atlantic Tunas (ICCAT). These stock assessments are conducted with scientists and data from throughout the world, including U.S. scientists and data. In the case of porbeagle sharks, SCRS determined that ICCAT did not need to conduct a stock assessment since Canada had already conducted one. As such, NMFS scientists reviewed the Canadian stock assessment and determined it was appropriate for use in domestic management.

To date, NMFS has not relied on outside organizations, such as the IUCN, when making stock status determinations. This is due to the unknown nature of the data and peer review methodology applied by these outside groups.

The latest blacktip shark assessments recommended not increasing catch levels in the Gulf of Mexico and keeping catch levels at historical levels in the Atlantic. To account for differences in catch between the Gulf of Mexico and Atlantic region and to follow recommendations from the blacktip shark stock assessments, NMFS is implementing a Gulf of Mexico non-sandbar LCS regional quota and an Atlantic non-sandbar LCS regional quota based on historical landings from HMS shark dealer reports from 2003 to 2005. Based on dealer reports, the Atlantic region has a lower non-sandbar LCS base quota (188.34 mt dw) than the Gulf of Mexico region (439.5 mt dw). Since the Atlantic blacktip shark stock assessment recommended not changing landings and did not recommend prohibiting the harvest of blacktip sharks, NMFS is implementing this regional quota based on historical landings in the Atlantic region.

Unlike the sandbar shark assessment, which recommended a specific TAC, or the blacktip stock assessments, which recommended specific catch levels, the dusky shark assessment did not give specific mortality targets. Dusky sharks have been on the prohibited species list in 2000; however, there continue to be dusky shark discards in other fisheries. NMFS estimated reduction in dusky shark mortality as a result of sandbar shark and non-sandbar LCS management actions. Based on the reduced quotas and trip limits, NMFS estimates that dusky shark mortality will likely be reduced from 33.1 mt dw to 9.1 mt dw per year. This is a 73-percent reduction in mortality compared to the status quo, which

should help rebuild the dusky shark population and afford dusky sharks more protection compared to the status quo.

Finally, NMFS is aware of a separate external hammerhead shark stock assessment that is being conducted, but not aware of separate stock assessments for common threshers or sand tiger sharks. Conducting stock assessments at a species specific level is difficult due to the lack of species-specific information collected to conduct stock assessments for each species of sharks involved in commercial shark fisheries. Therefore, species such as hammerhead sharks and common threshers are managed within species complexes. While NMFS is not implementing management measures for hammerhead sharks, it is likely that hammerhead shark landings will be reduced due to the reduced non-sandbar LCS quota and retention limits.

NMFS has not considered specific management actions for common threshers in this rulemaking, but an annual quota is in place for the pelagic shark complex (488 mt dw), and underharvests of this complex are not applied to the next season. NMFS may consider additional management actions for this species, as warranted, in the future.

For sand tiger sharks, based on their high vulnerability to exploitation and to discourage any future directed fisheries, NMFS included these sharks on the prohibited species list in 1997. Additionally, as with the dusky sharks, a reduction in discards based on the sandbar shark and non-sandbar LCS quotas and management actions taken in this rulemaking should afford additional protection for sand tiger sharks.

*Comment 7:* NMFS should include landings by states, such as Louisiana and Alabama, against the Federal shark quota.

*Response:* NMFS counts both Federal and state landings of sharks against the Federal shark quota since sharks in both state and Federal waters contribute to the stocks that are federally managed. This approach is consistent with that used by NMFS to manage other Federal fisheries such as reef fish and snapper grouper.

*Comment 8:* NMFS should consider species-specific quotas. NMFS should begin with blacktip sharks, since an assessment was done for them in both the Gulf of Mexico and Atlantic. This is because of variation in life history parameters, different intrinsic rates of increase, and different catch and abundance data for all species listed in each complex. Managing sharks as a complex is inappropriate.

*Response:* NMFS is moving towards species-specific management, including species-specific quotas. However, for some species, NMFS has only limited data which requires management to be based on species within a complex. Based on the latest stock assessment, NMFS has removed sandbar sharks from the LCS complex, resulting in a sandbar shark quota, and a non-sandbar LCS quota, comprised of blacktip, bull, smooth hammerhead, scalloped hammerhead, smooth hammerhead, lemon, nurse, silky, tiger, and spinner sharks. The sandbar shark assessment gave a specific TAC for sandbar sharks, which resulted in NMFS accounting for sandbar shark mortality in all fisheries (both commercial and recreational sectors) before establishing a base commercial quota of 116.6 mt dw. In order to monitor this quota, NMFS removed sandbar sharks from the LCS complex and set a separate commercial quota for this species.

However, while separate blacktip shark assessments were conducted, NMFS has decided not to implement separate blacktip shark quotas because the shark fishery is a multi-species fishery. The majority of sharks harvested in the directed shark fishery, other than sandbar sharks, are blacktip sharks. For instance, 82-percent of sharks caught in the directed shark fishery in the Gulf of Mexico region are blacktip sharks (not including sandbar sharks). The next highest landings were for hammerhead sharks at 7-percent and bull sharks at 5-percent. The South Atlantic region had the same pattern with the highest percentage of landings, apart from sandbar sharks, for blacktip sharks at 72-percent followed by hammerhead sharks at 14-percent, and then bull sharks at 4-percent. Because NMFS did not have species-specific assessments on other species besides blacktip and sandbar sharks, and because the majority of the LCS catch, not including sandbar sharks, is blacktip sharks, NMFS created a non-sandbar LCS complex with its own quota. To account for differences in catch between the Gulf of Mexico and Atlantic region, NMFS is implementing a regional Gulf of Mexico non-sandbar LCS quota and an Atlantic non-sandbar LCS quota.

*Comment 9:* NMFS should split the sandbar quota between research and bycatch. This could be a "phased-in" quota system where  $\frac{2}{3}$  of the quota in the first year would be allocated toward incidental landings and  $\frac{1}{3}$  would be allocated toward research.

*Response:* In establishing the base commercial quota of 116 mt dw, NMFS allocated approximately 42 mt dw to account for recreational harvest and

dead discards. A further allocation of  $\frac{1}{3}$  of the base commercial quota for the research fishery in the first year would only result in 38.8 mt dw for research. In addition, due to overharvests in 2007 (see Appendix C in the FEIS for more details), NMFS is reducing the base commercial sandbar shark quota to 87.9 mt dw annually for five years. A  $\frac{1}{3}$  allocation of this reduced base commercial quota would only leave 29.3 mt dw of sandbar quota available for research. One third of either the base annual quota or the adjusted five year quota would not provide enough trips or observations to produce statistically sound data on the several research questions NMFS intends to address, especially given that NMFS has already accounted for dead discards and recreational harvest in setting the base commercial quota. In addition, a  $\frac{2}{3}$  allocation of the sandbar quota would only allow fishermen (directed or incidental) to retain a few sandbar sharks (less than what was proposed under alternative suite 3, where all permit holders would have been allowed to retain sandbar sharks). Thus, splitting the quota into thirds would not provide benefits to the fishery or to the research needed for future stock assessments. However, as funds are available, NMFS would have scientific observers on vessels fishing outside the research fishery that would monitor discards of sandbar sharks. If large number of sandbar dead discards occurred in the fishery, resulting in mortality above the recommended TAC, NMFS would take management action, as necessary. Additionally, NMFS will monitor landings of sandbar shark by state fishermen and deduct those landings from the base commercial quota, as needed.

*Comment 10:* NMFS should not use the maximum rebuilding time period (70 years) allowed under the law but should use a more precautionary approach. NMFS should not strive for maximum sustainable yield (MSY) for blacktip and sandbar sharks. The proposed sandbar shark quota of 116 metric tons (mt) is too high to ensure recovery of this population and NMFS should consider adopting an even lower final number.

*Response:* The 2005/2006 stock assessment for sandbar sharks discussed three rebuilding scenarios, including: a rebuilding timeframe if no fishing were allowed; a TAC corresponding to a 50-percent probability of rebuilding by 2070; and a TAC corresponding to a 70-percent probability of rebuilding by 2070. Under no fishing, the stock assessment estimated that sandbar sharks would rebuild in 38 years. Under

the NS 1 guidelines, if a species requires more than 10 years to rebuild, even in the absence of fishing mortality, then the specified time period for rebuilding may be adjusted upward by one mean generation time. Thus, NMFS added a generation time (28 years) to the target year for rebuilding sandbar sharks. The target year is the number of years it would take to rebuild the species in the absence of fishing, or 38 years for sandbar sharks. NMFS determined that the rebuilding time that would be as short as possible for sandbar sharks would be 66 years, taking into account the status and biology of the species and severe economic consequences on fishing communities. This would allow sandbar sharks to rebuild by 2070 given a rebuilding start year of 2004, the last year of the time series of data used in the 2005/2006 sandbar shark stock assessment. Since sharks are caught in multiple fisheries, to meet the rebuilding timeframe under a no fishing scenario, NMFS would have to implement restrictions in multiple fisheries to eliminate mortality, such as entirely shutting down multiple fisheries to prevent bycatch. If NMFS were to shut down the shark fishery completely, such action would likely have severe economic impacts on the fishing community and it would likely result in difficulties for fisheries in which Councils recommend management measures as well as Commission-managed fisheries, which often catch sharks as bycatch. In addition, prohibiting all fishing for sharks would impact NMFS' ability to do collect data for future management.

The recommended TAC associated with a 50-percent probability of rebuilding by 2070 is 172.7 mt dw (or 240 mt whole weight (ww)). However, given the life history of sharks including slow growth, late age of maturity, and relatively small litter sizes, as described in the 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP), a 50-percent probability of success is minimally acceptable for sharks. Thus, NMFS adopted the TAC corresponding to a 70-percent probability of rebuilding by 2070, or 158.3 mt dw (220 mt ww). This timeframe is consistent with the Magnuson-Stevens Act, the NS 1 guidelines at § 600.310, the 2006 Consolidated HMS FMP (which includes the rebuilding requirements of the 1999 FMP), and the other national standards that require NMFS to consider, among other things, the economic and social impacts of the fishery.

## b. Discard Issues

*Comment 11:* NMFS should consider sandbar shark discards outside the research fishery. NMFS should also be concerned with derby-style fishing with the reduced quotas and retention limits.

*Response:* NMFS considered sandbar shark discards outside the shark research fishery when it established the base sandbar shark quota (see Table A.1 in Appendix A of the Final EIS). In doing so, NMFS set a commercial sandbar shark quota that, in addition to considering discards in other fisheries outside the shark research fishery, should keep sandbar shark mortality below the recommended TAC of 158.3 mt dw each year. In order to deter derby-style fishing outside the shark research fishery, NMFS reduced the trip limit for directed shark permit holders to 33 non-sandbar LCS per trip. This trip limit should allow the LCS fishery to stay open longer than it has in the past while also minimizing, to the extent practicable, regulatory discards and derby-style fishing.

*Comment 12:* NMFS should acknowledge that dusky shark bycatch will be an issue both inside and outside the research fishery. Seventy percent of dusky sharks are dead at haulback.

*Response:* Dusky sharks caught as bycatch under the new management measures would result in dead discards to the same extent as current levels. Currently, most of the dusky shark discards occur within the directed shark fishery (on average, 24.5 mt dw per year), with a total of 33.2 mt dw of dusky sharks discarded on average per year. Under the final action, there would no longer be a directed LCS fishery. For a limited number of trips, the few vessels that qualify for participation in the shark research fishery will be allowed to direct on LCS. Depending on the number of trips taken within the research fishery, NMFS estimates that yearly dusky shark discards could be between 0.5 mt dw (that would be caught during 64 trips associated with the adjusted sandbar shark quota) and 0.6 mt dw (that would be caught during 92 trips associated with the base sandbar shark quota), with a total of 9.1 mt dw of dusky shark discards across all fisheries. This is a 73-percent reduction in dusky shark discards compared to the status quo.

*Comment 13:* NMFS should evaluate if highgrading will be an issue outside the research fishery.

*Response:* Under the final action, highgrading, or the discarding of smaller, less valuable animals and retaining only the most valuable animals to fill a retention limit, is

expressly prohibited. However, because fishermen aim to have the highest profits per trip, highgrading can be an issue whenever trip limits are implemented.

Based on the latest shark stock assessments, NMFS is implementing a reduced shark trip limit from 4,000 lb of LCS per trip to 33 non-sandbar LCS per trip for directed permit holders operating outside the research fishery. NMFS expects that this reduced trip limit (approximately one quarter of what a directed fisherman lands on a shark trip under the status quo) and the prohibition on the retention of sandbar sharks will result in fishermen with directed shark permits no longer targeting LCS. Additionally, this trip limit is higher than the average number of sharks shark fishermen currently retain when targeting other species (i.e., 12 sharks from non-targeted trips). Thus, NMFS assumes that the reduced trip limit will allow fishermen with directed shark permits to keep all incidentally caught non-sandbar LCS as they target non-sharks species. Because fishermen will likely be allowed to keep all sharks caught when fishing for other species, the reduced trip limit should reduce the incentive to engage in highgrading.

## c. Species Complexes

*Comment 14:* NMFS should reconsider the use of the term "non-sandbar LCS." This title is awkward and might confuse some fishers. The use of "LCS" or "LCS (other than sandbars)" is recommended following the same logic as when referring to "pelagic sharks" (which otherwise would be referred to as non-blue or porbeagle pelagic sharks.)

*Response:* NMFS considered several names for the group of LCS that does not include sandbar sharks. NMFS felt keeping the title "LCS" for the new complex may be confusing with the "old" LCS complex (i.e., the complex prior to the implementation of the amendment). NMFS chose "non-sandbar LCS" because it was the most explicit description of the new complex: the LCS complex with sandbar sharks removed.

*Comment 15:* NMFS is taking sandbars out of the LCS complex. Where did NMFS get the authority to remove a given species from a complex?

*Response:* NMFS has the authority under the Magnuson-Stevens Act to manage all coastal sharks. As part of this authority, NMFS created the complexes in 1993 to aid in managing the fishery. Thus, NMFS may set species-specific quota as appropriate, given the best available science. Indeed, NMFS has often changed the specific species in

each management unit starting with the creation of five prohibited species in 1997. In this case, the sandbar shark assessment gave a specific TAC for sandbar sharks, which resulted in NMFS establishing a base commercial quota of 116.6 mt dw. In order to monitor this quota, NMFS is establishing a quota for sandbar sharks that is separate from the quota for the rest of the LCS complex.

*Comment 16:* The Director of the North Carolina Division of Marine Fisheries stated that NMFS should place blacktip sharks in the small coastal shark (SCS) complex.

*Response:* NMFS is not changing the composition of the SCS complex in this rulemaking. Rather, based on the TAC recommended by the sandbar shark stock assessment, NMFS is establishing separate quotas for sandbar sharks and the non-sandbar LCS. The non-sandbar LCS complex consists of blacktip, bull, smooth hammerhead, scalloped hammerhead, lemon, nurse, silky, tiger, and spinner sharks. Blacktip sharks are the species most commonly caught within this complex. In the 1993 FMP for Atlantic Sharks, blacktip sharks were placed within the LCS complex based on fishery dynamics. Blacktip sharks are more commonly caught with gear targeting LCS (i.e., BLL gear) rather than gear used to target SCS (i.e., gillnet gear). In addition, the blacktip shark stock assessments recommended that blacktip shark landings should not change or increase from historical catch levels. By placing blacktip sharks within the SCS complex, NMFS could either drastically reduce the blacktip shark regional quotas if the 454 mt dw SCS complex quota was not increased (i.e., the 454 mt dw quota would include the quota for blacktip sharks and SCS), or increase the SCS complex quota to include historical catch of blacktip sharks. Placing blacktip sharks within the SCS complex and increasing the overall SCS quota could result in increased catch levels of SCS. These catch levels may or may not be sustainable for the SCS complex. Therefore, at this time, NMFS is not placing blacktip sharks within the SCS complex.

## d. Over- and Underharvests

*Comment 17:* NMFS received several comments regarding transferring quota. These include: NMFS should consider transferring unused quota to the next season; NMFS should not consider transferring underharvests to the next season even if species are not overfished or the status is unknown. This is because other bodies such as the IUCN have expressed concern as to some of

these species; NMFS should subtract quota overages from the subsequent season's quota and disallow carryover of underharvests to the next season for populations that are of unknown status, overfished, or experiencing overfishing.

*Response:* Under the final action, NMFS will generally subtract overharvests that occurred during one fishing year from the next fishing year for each individual species or species group. Depending on the amount of overharvests, NMFS may decide to split the overharvests over several years to allow continuation of the shark research fishery and to minimize dead discards. In addition, NMFS will add underharvests up to 50-percent of the base quota to the next fishing year for species or species grouping in which the stock status of all species is other than unknown, overfished, or subject to overfishing. For all other species and species groups, underharvests will not be carried. Not applying underharvests should increase the likelihood that these stocks rebuild in a timelier manner. This approach is also used in other fisheries that NMFS manages, including bluefin tuna and swordfish.

#### e. Shark Display and Research Quota

*Comment 18:* NMFS received several comments in favor of the preferred management measures affecting display quotas under alternative suite 4. These comments included: NMFS should allocate 2 mt dw of sandbar sharks from the overall 60 mt ww display and shark research quota to public display and research under exempted fishing permits (EFPs); the 60 metric tons (mt ww) quota for display permits and research should be reduced if it has never been attained; NMFS should prohibit dusky sharks for public display; and, dusky sharks have no display value.

*Response:* In order to stay within the TAC recommended by the sandbar stock assessment, NMFS is reducing the commercial sandbar shark quota, and restricting the number of sandbar sharks that can be collected under EFPs and Display Permits. The final action restricts the sandbar shark collection to 1 mt dw for research under EFPs and 1 mt dw for public display to ensure that the sandbar shark mortality stays below the 158.3 mt dw TAC and to ensure that the shark research fishery has sufficient quota to produce statistically sound data. The preferred allocations to the EFP and display quotas were based on the 2 mt dw average annual collection of sandbar sharks under EFPs, scientific research permits (SRPs), and display permits from 2000 to 2006. As such, NMFS does not anticipate that these

restrictions will affect future sandbar shark collections under these types of permits.

Due to the severity of the overfished and overfishing status of dusky sharks, the collection of dusky sharks for public display will be prohibited. Aquariums that currently have dusky sharks will not be allowed to replace them. In addition, NMFS will review the allocation of dusky sharks for research under EFPs on a case by case basis. This should allow for research under EFPs on dusky sharks to continue, as appropriate.

*Comment 19:* NMFS received numerous comments stating that the existing research/display quotas for sharks should not be reduced because: the quota is already small and not expected to increase in the future; the EFP quota has never been exceeded; the collection of sandbar sharks for public display is not a significant contributing factor to the reported decline of this stock; there is a disproportionate amount of regulation on display permits compared to other permits for other fishermen; any reduction in quotas or restrictions on species, if scientifically warranted and if based on scientifically peer-reviewed stock assessments, should come entirely out of the commercial quotas which have not been historically adhered to, and where the animals are landed dead with zero conservation or educational value; the sandbar shark is one of only a handful of shark species that are exceptionally hardy and have historically adapted well to closed aquarium environments.

*Response:* While the 60 mt ww (or 43.2 mt dw) shark display and research quota is small compared to the current commercial 1,017 mt dw LCS quota, the final action does not change the overall display and research quota. The final action, however, does significantly reduce the commercial quota and prohibits most commercial fishermen from harvesting sandbar sharks. Additionally, the final action prohibits recreational retention of sandbar sharks.

As described in the response to Comment 18 in this section, the quantity of sandbar and dusky sharks authorized for display and research (outside of the shark research fishery) is limited under the final action. For sandbar sharks, the amount is limited to what has been landed, on average, under various EFPs during the past six years. Therefore, no negative economic impacts are anticipated with the EFP allocation of sandbar sharks. EFPs and display permits will no longer be issued for the collection of dusky sharks. This regulation is consistent with the prohibition on the harvest of dusky

sharks by commercial and recreational fishermen and, because of the overfished status and length of time for rebuilding, is appropriate for dusky sharks.

Finally, because EFPs exempt fishermen from certain regulations that other fishermen must follow, NMFS will continue to issue EFPs, SRPs, and display permits only if the applicant has shown compliance with other relevant regulations regarding reporting, notifying enforcement, and tagging animals.

*Comment 20:* NMFS should consider an exemption to allow for the live take of dusky sharks for public display. Aquariums need to work on the husbandry of these sharks.

*Response:* As discussed in the response to Comment 18 in this section, due to the severity of the overfished and overfishing status of dusky sharks, dusky sharks will be prohibited for collection for public display. Moreover, dusky sharks do not do well in captivity. Currently, only 13 dusky sharks per year have been collected under EFPs. Under the final action, NMFS will review the allocation of dusky sharks for research under EFPs on a case by case basis. This should allow for research under EFPs on dusky sharks to continue, as appropriate.

*Comment 21:* NMFS should explain how it will prohibit sandbar and dusky sharks for EFPs and display permits.

*Response:* EFPs allow fishermen to harvest species otherwise prohibited by existing regulations. NMFS is not prohibiting the collection of sandbar sharks under the EFP program. Instead, 1 mt dw for research under EFPs and 1 mt dw for public display will be allocated to fishermen to ensure that the sandbar shark mortality stays below the 158.3 mt dw TAC. However, due to the severity of the overfished and overfishing status of dusky sharks, dusky sharks will be prohibited for collection for public display because they do not do well in captivity. While NMFS cannot prohibit fishermen from incidentally catching dusky sharks, NMFS can prohibit their retention for public display or research under EFPs when necessary. NMFS reviews the allocation of dusky and sandbar sharks under EFPs and Display Permits on a case-by-case basis. If research on dusky sharks is deemed scientifically necessary, even if it includes mortality, NMFS may issue the necessary EFPs. However, such permits must have scientific merit and the research conducted by scientific staff in order for the permit to be issued. As is currently done for EFPs and Display permits, NMFS will continue to monitor all

sources of mortality as a result of EFPs, Display Permits, Scientific Research Permits, and Letters of Acknowledgments, and these data will be incorporated in future stock assessments.

*Comment 22:* NMFS should provide more information on how they track landings under EFPs and what happens to HMS that are collected under EFPs.

*Response:* NMFS requires persons who receive EFPs to report the number of total animals kept, discarded alive, and discarded dead under the EFP program. This information is published in the **Federal Register** every November/December in conjunction with NMFS' request for comments and Notice of Intent to issue EFPs and related permits in the subsequent year. The information is also published in the annual SAFE Report and may be used in stock assessments, if appropriate. Permittees who do not provide this information are not issued a permit in the future until all required reporting from past permits was received. NMFS does not track what is done with the animals (e.g., if they are sold to aquariums) after they have been collected and landed by the original permittees.

## 2. Porbeagle Sharks as Prohibited

*Comment 1:* NMFS received several comments in support of prohibiting the harvest of porbeagle sharks including: NMFS should prohibit the harvest of porbeagle sharks because even seasoned fishermen misidentify porbeagle sharks as mako sharks; the prohibition on the possession of porbeagle sharks is long overdue; NMFS should prohibit the harvest of porbeagle sharks and implement stricter management measures that address porbeagle take, including bycatch; and NMFS should prohibit the possession of porbeagle sharks, however, if bycatch of porbeagle sharks is allowed, the rule will have little effect on the overall status of porbeagle sharks.

*Response:* As a result of the 2005 Canadian stock assessment for the North Atlantic porbeagle shark, NMFS has determined that porbeagle sharks are overfished, but overfishing is not occurring. Under the final action, the commercial quota is 1.7 mt dw. NMFS estimates that commercial discards will be approximately 9.5 mt dw, and recreational catch, including landings in tournaments, will be approximately 0.1 mt dw per year. This TAC of 11.3 mt dw should increase the likelihood that fishing mortality will remain low, allowing the stock to rebuild within 100 years (see rebuilding plan in Chapter 1 of the FEIS). While bycatch of porbeagle

sharks will continue, the majority of porbeagle sharks caught currently are discarded alive. For instance, of an average of 723 porbeagle sharks that were discarded annually in the PLL fishery, only 161.3 were discarded dead whereas 561.6 were discarded alive. The final action is not expected to change this discard mortality rate. Therefore, dead discards should continue to be low and not negatively affect the stock.

*Comment 2:* NMFS received several comments, including comments from the states of Massachusetts and New Hampshire, opposing any prohibition of porbeagle shark retention including: there is a small historical porbeagle shark catch in the United States that is not significantly contributing to the loss of the porbeagle shark. The U.S. porbeagle fishery has remained sustainable under current regulations; other countries, such as Canada, should be more responsible for rebuilding this stock as they contribute more towards Atlantic-wide fishing mortality; NMFS should pressure Canadians to reduce their porbeagle catch; porbeagle sharks are the only big game fish in the Northeast; and placing porbeagle sharks on the prohibited species list takes away 33-percent of the potential catch in New England.

*Response:* The final action to reduce the TAC for porbeagle sharks will cap U.S. fishing mortality at the current level. Given the low level of porbeagle catch in U.S. waters, capping mortality at the current U.S. fishing level, assuming Canada also continues to take action to conserve porbeagle sharks, should allow the porbeagle shark population to rebuild within 100 years (see rebuilding plan in Chapter 1 of the FEIS). Capping fishing levels should also discourage any future directed fishery on this species.

Other countries that have a directed fishery for porbeagle sharks have reduced their porbeagle quotas. For instance, the Canadian porbeagle quota was cut by 80-percent in 1998. It was cut back even further in 2001 and again in 2006. The current Canadian quota is 250 mt per year, 185 mt of which may be taken by the directed porbeagle shark fishery, with the rest of the quota being allocated for bycatch. In addition, according to the latest ICCAT Recommendation (07-06), all contracting parties are obligated to reduce mortality of porbeagle sharks in their directed porbeagle shark fisheries. NMFS may take additional management measures in the future, as necessary, if future stock assessments warrant such action.

*Comment 3:* The Atlantic States Marine Fisheries Commission (ASMFC)

requested establishing a 2 mt quota for porbeagle sharks to allow a limited harvest. Allowing a small harvest of porbeagle sharks would help the ASMFC set identical species groups while offering protection from overharvest.

*Response:* NMFS is setting a reduced TAC for porbeagle sharks of 11.3 mt dw, of which 1.7 mt dw is allocated to commercial harvest. This cap on fishing mortality at its present level by commercial and recreational fishermen should prevent a directed fishery for this species from developing in the future. In addition, it is an 88-percent reduction in the current commercial quota of 92 mt dw, which will help ensure rebuilding within 100 years (see rebuilding plan in Chapter 1 of the FEIS).

*Comment 4:* Does NMFS have any evidence that Canadian porbeagle sharks go into U.S. waters? Is NMFS aware if U.S. fishermen are catching these Canadian sharks?

*Response:* Tagging data provide strong evidence that there are distinct porbeagle populations in the Northeast and Northwest Atlantic, and that the Northwest Atlantic stock is a separate population that undertakes extensive annual migrations between Canada and northeastern United States. Given these migrations, porbeagle sharks found in U.S. and Canadian waters are considered to be one stock that is shared by U.S. and Canadian fishermen.

*Comment 5:* If porbeagle sharks are overfished but overfishing is not occurring, what would the rebuilding timeframe be if the fishery was to continue at the current level?

*Response:* Since the 2005 Canadian stock assessment on which NMFS based its analysis included U.S. commercial landings of porbeagle sharks, capping fishing mortality at its current level should allow the species to rebuild within 100 years (see rebuilding plan in Chapter 1 of the FEIS).

*Comment 6:* Will NMFS propose similar porbeagle shark prohibition measures at the International Commission for the Conservation of Atlantic Tunas (ICCAT) meeting this year? Since most landings for porbeagle occur outside the United States, international cooperation is needed to help manage this species.

*Response:* Adopted at the 2007 ICCAT annual meeting in Turkey, ICCAT Recommendation (07-06) obligates all Contracting Parties to take appropriate measures to reduce fishing mortality in fisheries targeting porbeagle sharks. While the United States does not have a directed porbeagle shark fishery, and U.S. commercial and recreational

landings are small (1.8 mt dw), this ICCAT measure should help reduce mortality of porbeagle sharks that are targeted by other countries. The United States is also implementing a reduced TAC of 11.3 mt dw, which is below the current commercial quota of 92 mt dw per year for porbeagle sharks, and encouraging the live release of porbeagle sharks. This final action should prevent a directed fishery from developing for porbeagle sharks in U.S. waters in the future.

*Comment 7:* NMFS underestimated the number of porbeagle sharks being caught. This is because the Marine Recreational Fisheries Statistics Survey (MRFSS) data is flawed. Porbeagle sharks are not present in New England waters when MRFSS is collecting their surveys in this area.

*Response:* NMFS currently is working on a marine recreational information program to improve data collection from the recreational sector. Due to the rarity of porbeagle shark landings, it is difficult to estimate porbeagle landings with survey data, which only sample a portion of the recreational fishing fleet and then extrapolate the number of fish caught based on the estimated number of anglers. Therefore, NMFS may consider census data (i.e., a trip ticket or a call-in system where all porbeagle shark landings are counted) in the future to better estimate recreational porbeagle landings.

*Comment 8:* The Large Pelagic Survey (LPS) started out as a tuna survey, and the LPS survey happens during the middle of summer. There is no LPS survey taking place when porbeagle sharks are present, so NMFS' data is skewed.

*Response:* The LPS survey was designed to capture recreational landings in the Northeast during the time period when most fishing takes place north of Virginia. Currently, the survey consists of randomly selected weekly telephone and dockside intercept interviews, with mandatory participation from June 1 through October 31 from Virginia to New York. The survey is conducted July 31 through October 31 for states north of New York. Past phone surveys indicated this is when most of the fishing effort occurs in this region. As mentioned in the response to Comment 7 in this section, due to the rarity of porbeagle shark landings, it is difficult to estimate porbeagle landings with survey data. Therefore, NMFS may consider census data (i.e., trip ticket or a call-in system where all porbeagle sharks landed are counted) in the future to better estimate recreational porbeagle landings.

*Comment 9:* NMFS should have recreational fishermen report their porbeagle shark landings.

*Response:* NMFS currently does not require recreational fishermen to report shark landings. NMFS collects data on recreational fishing catch and effort through the LPS and the MRFSS, which is considered the best available science for determining recreational landings. These surveys collect data on fishing effort and catch of highly migratory species. In addition, randomly selected fishing tournaments are an important component of HMS recreational fisheries data. However, because of the rarity of porbeagle shark landings, in general, NMFS may not be capturing all of the porbeagle sharks landed recreationally through these types of surveys. Thus, NMFS is currently working on ways to gather more data on recreational landings of porbeagle sharks.

### 3. Retention Limits

*Comment 1:* The proposed 22 non-sandbar LCS retention limit is not economically feasible and is the equivalent of shutting down the fishery; NMFS should consider a trip limit of 0 to 75 non-sandbar LCS to maintain economic viability.

*Response:* NMFS assessed and analyzed the economic impacts of the proposed retention limits, which are summarized in the FRFA and Chapter 8 of the FEIS. The proposed 22 non-sandbar shark LCS retention limit was calculated by dividing the available quota over average annual number of trips that landed non-sandbar LCS by directed and incidental permit holders as reported in the Coastal Fisheries logbook and the HMS logbooks. At the time of the Draft EIS, the available non-sandbar LCS quota was determined by the average annual landings reported in the HMS and Coastal Fisheries logbooks from 2003 to 2005. However, during the comment period, the Southeast Fisheries Science Center (SEFSC) recommended using HMS shark dealer reports (i.e., southeast and northeast general canvass and SEFSC quota monitoring databases) to calculate historical landings of non-sandbar LCS since the stock assessments were, in part, based on landings reported by HMS shark dealer reports. Therefore, in the FEIS, NMFS used the shark dealer reports to calculate the non-sandbar LCS base quota. Because the HMS shark dealer reports include landings by both state and Federal shark fishermen, whereas logbook data includes landings by only federally-permitted shark fishermen, using dealer reports results in a higher non-sandbar LCS base quota.

In this final action, NMFS is using a higher base quota. After accounting for overharvests that occurred in 2007 (see Appendix C of the Final Environmental Impact Statement), NMFS is revising the retention limits based on the larger non-sandbar LCS quota. The final measures implement a 33 non-sandbar LCS trip limit for directed permit holders and a three non-sandbar LCS trip limit for incidental permit holders. While the trip limit for directed permit holder has increased from what was proposed in the Draft EIS, NMFS assumes that fishermen with directed shark permits will no longer target non-sandbar LCS outside the research fishery. Rather, a 33 non-sandbar LCS trip limit allows fishermen to keep non-sandbar LCS while they target other species, such as reef fish and snapper-grouper. Based on BLL observer program data from 2005 to 2007, fishermen with directed shark permits fishing for snapper/grouper kept, on average, 12 sharks per trip. Thus, this trip limit should help in preventing excess discards. However, this retention limit will be too low to create an incentive for fishermen to target non-sandbar LCS.

NMFS is aware that the revised retention limit of 33 non sandbar sharks per vessel/trip is a significant reduction from the current 4,000 lb dw LCS retention limit for directed permit holders. These measures are necessary, however, to rebuild overfished stocks, reduce bycatch, and end overfishing consistent with NMFS's obligations under the Magnuson-Stevens Act.

*Comment 2:* NMFS should consider a per day limit in lieu of an individual trip limit. NMFS could reduce the limit to something like 2,000 lb non-sandbar LCS per day. This would allow a larger amount to be harvested in a single trip, making it more profitable for the fishermen. A day limit would also keep quota available for longer throughout the year.

*Response:* NMFS has not considered a per day trip limit because of the difficulty in determining how NMFS would monitor what a vessel harvests within a 24 hour period during a multiday trip. Currently the shark fishery is managed on a per trip basis, as are most of the HMS fisheries. While a higher per day limit may allow for a larger single trip, which may reduce discards, it would be difficult for NMFS to monitor when a vessel left and returned to port and whether or not this was done multiple times within 24 hours, especially if vessels visited several ports and were not required to possess vessel monitoring systems (VMS). A per trip limit is easier to enforce; no matter what port a vessel

returns to, it would be held to the same trip limit. While a per day limit may reduce the number of trips and elongate the season based on how gillnet and BLL trips targeting non-shark species typically fish, the trip limits in the final action were devised in such a way to keep the non-sandbar LCS season open longer than they have been in the past. NMFS estimates that under the non-sandbar trip limit in this final action, the fishery should remain open the entire year. Given the reduced trip limits to accommodate the reduced shark quotas, NMFS believes that dividing the available quota across the historical fishing effort should help the shark fisheries stay open longer. In addition, since directed shark permit holders will presumably no longer target non-sandbar LCS based on those reduced trip limits and the prohibition on retention of sandbar sharks outside the research fishery, the non-sandbar LCS fishery will likely be incidental in nature where non-sandbar LCS are landed while fishermen target other species throughout the year.

*Comment 3:* NMFS should propose a 4,000 lb level per year for directed permit holders and grant the least productive vessels an incidental permit.

*Response:* Based on the available quota (see Appendix C in the FEIS for more details), NMFS is setting a non-sandbar LCS trip limit of 33 non-sandbar LCS for directed shark permit holders (approximately 1,000 lb dw per trip of non-sandbar LCS); incidental permit holders would be allowed 3 non-sandbar LCS per trip. If fishing effort were to stay the same as the average level of effort from 2003-2005, then NMFS expects the shark fishing season to stay open for the entire fishing year with these trip limits. NMFS has chosen a trip limit that would utilize the entire non-sandbar LCS quotas outside the research fishery, assuming fishing effort remains at the average level from 2003-2005. A 4,000 lb dw limit per year for non-sandbar LCS would be approximately four trips per year for directed fishermen. At this time, NMFS feels that such a retention limit would be overly restrictive; however, if NMFS finds that the 33 non-sandbar LCS per trip for directed fishermen does not sufficiently rebuild the overfished stock of sandbar sharks or prevent overfishing, then trip limits can be adjusted, as appropriate. Fishermen selected to participate in the shark research fishery would be afforded higher trip limits consistent with research objectives and would be allowed to land all shark species, except prohibited sharks.

In order for NMFS to change retention limits for individual vessels based on their past landing history, NMFS would likely consider an IFQ or LAPP.

However, as explained in response to Comment 2 under "Quotas" above and in Chapter 1, it would take NMFS several years to implement an ITQ system. Under the current timeline under the Magnuson-Stevens Act for establishing a plan amendment to end overfishing, NMFS has insufficient time to establish an IFQ or LAPP for sharks at this time. However, NMFS could consider developing an IFQ or LAPP for sharks as well as other highly migratory species in the future.

*Comment 4:* NMFS should carve out a retention limit specific to existing gillnetters. Gillnetters are being penalized by the preferred retention limit because they catch very few sandbar and dusky sharks.

*Response:* NMFS believes that revised quotas and retention limits for non-sandbar LCS that apply to all gear types are more appropriate. These revised retention limits include a higher retention limit for directed shark permit holders compared to incidental shark permit holders. While sandbar and dusky sharks may be less likely to be caught in gillnet gear compared to BLL gear, setting separate gillnet retention limits was not considered as a part of this rulemaking mainly because NMFS has serious concerns regarding interaction rates with marine mammals and protected resources with gillnets. Given these interactions set forth in the following paragraph, NMFS believes it is inappropriate to implement measures that might result in increased fishing effort with this gear type. For example, setting different trip limits for gillnet gear could result in displaced BLL fishermen moving to the gillnet fishery.

The five year incidental take statement (ITS) for the drift gillnet fishery in the 2003 Biological Opinion (BiOp) was 10 loggerhead sea turtles (with 1 mortality), 22 leatherback sea turtles (with 3 mortalities) and 1 smalltooth sawfish (with zero mortalities). The ITS was specific to drift gillnet gear as strikenet gear had not interacted with protected species, at that time, and sink nets were not considered to be part of the shark gillnet fishery. However from 2003 to 2007 (2003 being the start of the ITS period), vessels with shark permits using drift, sink, and strike gillnets interacted with a total of 13 loggerhead sea turtles (3 of which died or were unresponsive when discarded), 1 leatherback sea turtle and 2 bottlenose dolphins (1 of which died). In addition, in January 2006, an Atlantic right whale calf was caught and died in

gillnet gear off the northeast coast of Florida. Therefore, NMFS is not establishing a higher specific gillnet retention limit at this time.

*Comment 5:* NMFS should consider capping the number of vessels that can deploy gillnets for sharks.

*Response:* There are currently only 4 to 6 sink and strike gillnetting vessels combined that target sharks (Carlson and Bethea, 2007). Given the reduction in trip limits as a result of this rulemaking, and restrictions and regulations under the Atlantic Right Whale Take Reduction Plan for this gear, NMFS does not believe there would be a significant increase in shark gillnet fishing in the future.

*Comment 6:* NMFS should lower the incidental catch limit for non-sandbar LCS to be more in line with the current average (3 non-sandbar LCS/vessel/trip); NMFS should not decrease the directed permit holder retention limits by 30-percent while increasing the incidental retention limit by more than seven times; NMFS should provide better justification for raising the trip limits for incidental permit holders; the proposed retention limit increase for incidental permit holders could increase fishing effort and bycatch; NMFS should consider restricting incidental take of non-sandbar LCS.

*Response:* In the final action, NMFS establishes retention limits of 33 non-sandbar LCS per trip for directed permit holders and 3 non-sandbar LCS per trip for incidental permit holders. NMFS initially proposed retention limits of 22 non-sandbar LCS per trip for both directed and incidental permit holders because NMFS considers the future non-sandbar shark fishery outside the shark research fishery as mainly incidental in nature (i.e., fishermen would not target non-sandbar LCS based on the low retention limits). Under the proposed scenario, incidental permit holders could have experienced a net positive economic benefit, given the retention limit of 22 non-sandbar LCS trip limit was more than the average of 3 non-sandbar LCS per trip that they currently retain. Such an increase in trip limits for incidental permit holders could have resulted in increased fishing pressure on sharks by incidental permit holders.

Based on public comment and to acknowledge differences among directed and incidental permit holders (e.g., on average, directed permit holders discard more sandbar and dusky sharks (8.1 mt dw and 25.7 mt dw per year, respectively) than incidental permit holders (1.5 mt dw and 3.8 mt dw per year, respectively)), NMFS' final action is to set separate retention limits based on permit type. Directed permit



holders will be allowed a higher retention limit than incidental permit holders. This affords directed permit holders, who may have paid more for their directed shark permit and who presumably rely on shark products for a larger part of their income, a higher retention limit than if all permit holders had the same retention limit.

*Comment 7:* NMFS should clarify how a retention limit based on the number of sharks per trip would work. What happens if you get 100 sharks on a line? Under these new regulations, one will have to make multiple trips to be legal.

*Response:* Under current regulations, NMFS has a directed LCS trip limit of 4,000 lb dw. When fishermen exceeded this trip limit on a given set, they would often cut their gear and leave it while they returned to port to offload their legal trip limit. Once they had offloaded, they would return to retrieve the rest of their gear and catch. The same principle applies for this final action. However, due to the reduction in the retention limit and the prohibition on the harvest of sandbar sharks, NMFS assumes that fishermen with directed shark permits would no longer target non-sandbar LCS as they have in the past. Rather, fishermen would keep non-sandbar LCS only while they target other species, such as reef fish and snapper-grouper. The trip limit in this final action of 33 non-sandbar LCS for directed shark permits should minimize dead discards of sharks that fishermen catch while in pursuit of other species.

*Comment 8:* NMFS should have proposed different retention trip limits for different species in different regions because there are more sandbars available in the Atlantic and more blacktip sharks available in the Gulf of Mexico; NMFS should split trip limits by state given the tendency of different areas to catch sandbar or dusky sharks; NMFS should consider the fact that Louisiana fishermen catch mostly blacktip sharks and no sandbar or dusky sharks and, therefore, should have a larger retention trip limit.

*Response:* Based on public comment, NMFS analyzed regional quotas and retention limits for two regions: the Atlantic and Gulf of Mexico regions. As a result, NMFS is implementing regional quotas based on the results of the blacktip shark assessment, overharvests that occurred in 2007 (for more details, see Appendix C), and the fact that the ASMFC interstate shark management plan will implement measures in state waters of the Atlantic. Regional quotas allow for a higher non-sandbar LCS quota in the Gulf of Mexico region, which is comprised of a healthy stock

of blacktip sharks. Regional quotas also allow for a lower non-sandbar LCS quota in the Atlantic region where the stock status of blacktip sharks is unknown and the majority of dusky sharks are caught.

However, while the final action sets regional quotas for non-sandbar LCS, NMFS is not implementing regional non-sandbar LCS retention limits. Instead, the same retention limit for non-sandbar LCS would apply in the Atlantic and the Gulf of Mexico regions. NMFS believes that a single retention limit, regardless of region, will help with enforcement and be less confusing for fishermen. For example, with one retention limit, fishermen fishing near the Florida Keys could move between the two regions on one trip. If there were two different retention limits, then fishermen would need to stay in one area per trip or risk landing a higher trip limit in the wrong region. Finally, while the analyses for setting these retention limits used historical fishing effort as a proxy for determining the retention limit, it is uncertain how future effort would be allocated among regions, or even states. This added uncertainty makes it difficult to determine a region-specific or state-specific retention limit, given the other management measures that are changing as a result of this final action.

*Comment 9:* NMFS should consider having a set-aside quota for the incidental fishermen so that they can still retain sharks when the directed fishery is closed.

*Response:* As a result of the final actions in this rule, NMFS is assuming that fishermen with directed shark permits will no longer target non-sandbar LCS. Rather, fishermen will likely keep sharks only while they target other species such as reef fish and snapper-grouper. As such, the non-sandbar LCS fishery would be incidental in nature and non-sandbar LCS will likely be landed only incidental to the non-shark species that the fishermen would target throughout the year. Given the reduced trip limits for non-sandbar LCS, NMFS believes that the shark fishery will remain open for longer periods than in the past, possibly the entire year. Given the analyses that indicate the fishery will be open most of the time and the change in status of the fishery, NMFS believes that an incidental set aside is not needed at this time.

*Comment 10:* NMFS should consider a trip limit that is not based on weight since most fishermen do not have scales on their vessels.

*Response:* Under the final action, NMFS is basing the trip limits on the

number of sharks per trip for both directed and incidental permit holders.

*Comment 11:* If 7 out of 10 LCS landed are sandbar sharks, as NMFS claims, and NMFS has a 500+ mt dw non-sandbar LCS quota, then NMFS' discard calculations are flawed. A 500+ mt dw non-sandbar LCS quota would result in 3,500 mt of sandbars being discarded.

*Response:* The catch composition described above would only be realized if 1) fishermen were directing effort on sharks, and 2) there was a 4,000 lb dw trip limit. This catch composition, which was based on information from NMFS BLL observer reports, was used to estimate the number of trips that the shark research fishery could take to harvest the available sandbar shark quota, assuming there was a 4,000 lb dw LCS trip limit within the research fishery.

However, for trips outside the research fishery, sandbar sharks would be prohibited and there would be reduced non-sandbar LCS trip limits. Therefore, NMFS assumes that directed shark permit holders would no longer make trips targeting non-sandbar LCS because of the significant reduction in retention limits and the fact that sandbar sharks could not be retained, therefore, the catch composition and subsequent sandbar discards described in the comment above would not apply to trips occurring outside the research fishery. Given this assumption, and based on the best available science from logbook, dealer reports, and observer program data, NMFS estimates that incidental sandbar shark mortality outside the research fishery would be approximately 40 mt dw. This estimate was determined by evaluating logbook data and observer reports to estimate sandbar shark discards from pelagic longline (PLL) gear (4.3 mt dw), discards by recreational fishermen (27 mt dw), discards within the shark research fishery (0.3 mt dw), sandbar sharks discarded by fishermen without HMS permits (6.3 mt dw), and sandbar sharks that used to be landed by incidental fishermen (2.3 mt dw).

#### 4. Fins On Requirement

*Comment 1:* NMFS received several comments in support of a ban on shark finning as well as support for the proposal to land sharks with their fins attached. Commenters believe that shark identification is hampered by fin removal, enforcement is made easier if sharks are landed with fins attached, that the quality of data collected would improve, which is critical to improving the sustainability of shark stocks, and that technical difficulties of landing

sharks whole could be alleviated with input from fishery experts and NOAA staff. A commenter also stated that NMFS should implement this measure promptly in the Atlantic while also taking steps to ensure a similar measure is implemented in the U.S. Pacific waters.

*Response:* On December 21, 2000, the Shark Finning Prohibition Act (Public Law 105-557) (SFPA) was signed into law. The SFPA amended the Magnuson-Stevens Act section 307(1)(P), making it unlawful for any person "(i) to remove any of the fins of a shark (including the tail) and discard the carcass of the shark at sea; (ii) to have custody, control or possession of any such fin aboard a fishing vessel without the corresponding carcass; or (iii) to land any such fin without the corresponding carcass." On February 11, 2002 (67 FR 6194), NMFS published a final rule that established regulations which, among other things, prohibit any person from engaging or attempting to engage in shark finning; possessing shark fins without the corresponding carcasses while on board a U.S. fishing vessel; and landing shark fins without the corresponding carcasses. In this Amendment, NMFS is selecting an alternative that will require fishermen to land sharks with their fins naturally attached. This requirement will improve enforcement, species identification, data quality for future stock assessments, and further prevent the practice of shark finning. In the U.S. Pacific Ocean, three Regional Fishery Management Councils recommend shark management measures to NMFS: the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Western Pacific Management Council. The Councils may consider recommending amendments to fishery management plans to include measures to land sharks with fins attached in the U.S. waters of the Pacific Ocean.

*Comment 2:* NMFS received several comments in opposition to landing sharks with fins attached stating that this requirement would result in large amounts of waste at the dock, that the market has grown accustomed to receiving sharks in log form, that it will be more difficult for law abiding fishermen to comply with the law, and it will do nothing for those intent on breaking the law who may still bring only fins to the docks.

*Response:* While this requirement will change current fishing practices, NMFS does not believe that the requirement to land sharks with fins attached is overly burdensome for the following reasons. The requirement to land sharks with fins attached will allow fishermen to

leave the fins attached by at least a small piece of skin so that the fins could be folded against the carcass and the shark packed efficiently on ice while at sea. Shark fins could then be quickly removed at the dock without having to thaw the shark. Sharks may be eviscerated, bled, and the head removed from the carcass at sea. These measures should prevent excessive amounts of waste at the dock, since dressing (except removing the fins) the shark may be performed while at sea. While this will result in some change to the way in which fishermen process sharks at sea, because the fins may be removed quickly after the shark has been landed, NMFS expects that the market will continue to receive sharks in their log form. Alternatively, the dealers may decide to accept shark carcasses with the fins still attached. No person aboard a vessel with a shark permit would be allowed to possess shark fins without the fins being attached to the corresponding carcass until after the shark has been landed. Individuals that do not have a shark permit or who land shark fins detached from the corresponding carcass will be in violation of the regulations and subject to enforcement action.

*Comment 3:* NMFS received several comments regarding the 5-percent fins to carcass ratio stating that 1) the ratio is wrong and NMFS needs to collect data to re-examine the ratio because it is different for all species, 2) NMFS should urge Congress to revise the fin to carcass ratio in the SFPA, 3) making fishermen land sharks with fins attached could still lead to a violation of the 5-percent ratio, and 4) fishermen are unsure of which weight to record in their logbook if the 5-percent ratio remains in effect and sharks are landed with fins attached.

*Response:* NMFS first implemented the 5-percent fin-to-carcass ratio in the 1993 Shark FMP. This ratio was based on research that indicated that the average ratio of fin weight to dressed weight of the carcass was 3.6 percent, and the sandbar fin ratio was 5.1 percent. In December 2000, the SFPA was signed into law. The SFPA established a rebuttable presumption that any shark fins landed from a fishing vessel or found on board a fishing vessel were taken, held, or landed in violation of the shark finning ban if the total weight of shark fins landed or found on board exceeded 5-percent of the total weight of shark carcasses landed or found on board. This management measure was implemented by NMFS through a final rule released in February 2002. NMFS may conduct additional research on the fin-to-carcass ratio in

the shark research fishery, though any changes to the 5-percent ratio will have to be modified by Congressional action. In order to help fishermen document that sharks were landed with their fins attached, NMFS intends to modify the dealer weigh-out slips so that dealers may clearly document that the sharks were landed with fins attached. Consistent with the regulations at § 635.30(c)(3), a person that has been issued a Federal shark LAP and who lands shark in an Atlantic, Gulf of Mexico, or Caribbean coastal port must have all fins and carcasses weighed and recorded on the weigh-out slips specified in § 635.5(a)(2) and in accordance with regulations at part 600, subpart N. Fishermen may either record the weight of the whole shark landed or they may record carcass and fin weights separately. Dealers must report the dressed carcass weight separately from the fin weight.

*Comment 4:* NMFS received several comments, including one from the State of Florida, that NMFS should recalculate the conversion factor between dressed weight and whole weight of a shark since more of the shark is going to be landed.

*Response:* The 1.39 conversion factor from dressed weight to whole weight is used to convert the dressed (gutted) weight of a shark, (the weight of the shark carcass in a log form with fins removed) to a whole weight. NMFS will continue to monitor shark quotas in dressed weight (i.e., carcass in log form with fins removed) and will use shark landings recorded via dealer reports to monitor the quota outside the shark research fishery. Therefore, the conversion factor should not need to be recalculated since the definition of dressed weight would still constitute a shark log with fins removed. Currently, dealers record the fin weights and dressed weight of the shark carcasses separately on their dealer reporting forms; in this rule, NMFS clarifies this reporting requirement. However, NMFS will monitor the situation and may change the conversion factor if appropriate.

*Comment 5:* NMFS received several comments stating that NMFS should allow fishermen to remove just one pectoral fin, remove all fins except the pectoral fins, allow the removal of fins from species in the SCS complex, and allow vessels operating in the shark research fishery to remove the fins since those vessels would have 100-percent observer coverage. NMFS also received several comments from the State of Florida that NMFS should allow fishermen to remove the tail of the shark at sea and that NMFS should provide

fishermen with a diagram depicting the proper way to clean and land sharks with fins attached.

*Response:* The provision to land sharks with their fins attached allows fishermen to bleed, eviscerate, and remove the head at sea while cutting the fins almost all the way off so that the fins can be folded and the shark can be packed on ice. Authorizing the removal of certain fins or the fins of a specific species, or within a species complex, or from vessels within the research fishery could create additional enforcement problems and complicate compliance. Therefore, NMFS is requiring that all fins remain attached to the carcass through landing for all vessels. Because there are potentially many ways that the sharks may be dressed while leaving the fins attached, NMFS does not believe it is appropriate to provide specific instructions on how to dress sharks because more than one method may be used. NMFS only requires that sharks be landed with their fins naturally attached. Fishermen are allowed the flexibility to dress the shark and tailor the method to their specific operation or dealer requirements, providing they land all sharks with their fins naturally attached.

*Comment 6:* NMFS received several comments regarding the potential food safety or Hazardous Analysis of Critical Control Point (HACCP) concerns if shark fins cannot be removed until the shark is landed because it may be difficult to keep the core temperature of the shark at 40 degrees in 90 degree heat. The state of Florida commented that NMFS should test shark meat quality to determine if there is a decrease in quality as a result of regulatory actions.

*Response:* The Food and Drug Administration (FDA) published regulations (December 18, 1995; 60 FR 65092) mandating the application of the HACCP principles to ensure the safe and sanitary processing of seafood products. Although these regulations do not apply to fishing vessels or transporters, the processors of domestic seafood must comply with the regulations as it applies to incoming product. Dealers should consult the FDA Center for Food Safety and Applied Nutrition Fish and Fisheries Products Hazards and Controls Guidance for guidance on FDA regulations. The provision to land sharks with their fins attached allows fishermen to bleed, eviscerate, and remove the head at sea while cutting the fins almost all the way off so that the fins can be folded and the shark can be packed on ice. Because the sharks may be dressed and the fins cut almost all

the way off the shark at sea before it is packed on ice, the shark should not have to be thawed to completely remove the fins once the shark is landed. In addition, reduced retention limits for non-sandbar LCS should reduce the number of sharks that are landed per trip, therefore decreasing the amount of processing time at the dock. NMFS might conduct tests through the shark research fishery to see if the new fins on requirement affect fish meat quality. However, the results of these tests would be limited in use as the higher retention limits in the shark research fishery could increase processing times and therefore lower meat quality.

*Comment 7:* NMFS received several comments regarding international cooperation and imports including, 1) NMFS should set a firm shark conservation precedent for the international community, 2) NMFS should not get too far out in front of the international community, and 3) the United States should ban imports of shark fins from countries that do not prohibit shark finning.

*Response:* The United States has taken an active role in promoting improved international shark conservation and management measures in international fora such as Regional Fisheries Management Organizations (including ICCAT), the United Nations General Assembly, the Convention on International Trade of Endangered Species (CITES), and the Convention on Migratory Species. Consistent with the United Nations Food and Agricultural Organizations' International Plan of Action for sharks, the United States completed and implemented the National Plan of Action (NPOA) for sharks in February 2001. The NPOA calls for data collection; assessment of elasmobranch stocks; development of management measures, where appropriate; research and development of mitigation measures to reduce shark bycatch; and outreach and education. The requirement to land sharks from the U.S. Atlantic Ocean with their fins attached should help raise awareness in the international arena of enforcement issues associated with shark finning bans and the 5-percent fin-to-carcass ratio. NMFS published a proposed rule on April 4, 2008 (73 FR 18473), that would amend the International Trade Permit (ITP) Program to require shark fin importers, exporters, and re-exporters (shark fin traders) to obtain an ITP consistent with ICCAT recommendations. This requirement would provide needed information on shark fin trade participation and would provide NMFS enforcement access to trade records, since the export of shark

fins is one of the primary economic incentives for much of the U.S. Atlantic shark fishery.

##### 5. Time Area Closures

*Comment 1:* NMFS should include the Marine Protected Areas (MPAs) recommended by the South Atlantic Fishery Management Council (SAFMC) in alternative suite 5 because if that alternative were selected, the MPAs proposed by the SAFMC would still need to be implemented.

*Response:* NMFS decided to include a prohibition on shark BLL fishing in the MPAs in several of the alternative suites in order to ensure that the SAFMC's Amendment 14 prohibition on bottom tending gear would include HMS BLL gear. NMFS needed to implement complementary regulations in order for the MPAs to be effective. Since alternative suite 5 would have resulted in a closure of the entire shark fishery, no shark BLL fishing would occur in the MPAs or elsewhere. Thus, NMFS did not need to include a prohibition on shark BLL fishing in MPAs in alternative suite 5.

*Comment 2:* NMFS received a number of specific comments regarding the MPAs recommended by the SAFMC, including: 1) coordinates of MPAs — NMFS should provide the correct coordinates for the Charleston Deep Artificial Reef MPA; 2) NMFS should state the specific type of MPAs being implemented (i.e., type II MPAs); and, 3) NMFS should include a transit exemption for vessels traveling through proposed MPAs with BLL.

*Response:* NMFS is aware of problems with the coordinates provided in the Draft Amendment for the Charleston Deep Artificial Reef and has provided the correct coordinates for the Charleston Deep Artificial Reef in Final Amendment 2 to the Consolidated HMS FMP. In the Draft EIS, NMFS described the MPAs as type II MPAs according to the language used in the SAFMC's Amendment 14. Type II MPAs are areas that are closed to bottom fishing but allow trolling for coastal pelagics and HMS. Since NMFS is prohibiting the use of BLL gear in these MPAs there is no need to specify the type of MPA in the proposed or final rules. Readers should refer to SAFMC's Amendment 14 for more information on the type of MPAs being recommended by the Council and being implemented by NMFS. NMFS did not implement a stowage provision because very few HMS permitted vessels have historically fished in the MPAs, and the MPAs are generally small in size and can easily be circumnavigated by BLL vessels. If the SAFMC recommends a stowage

provision, then NMFS may consider a similar backstop provision in the HMS regulations.

*Comment 3:* NMFS should implement VMS requirements for the SAFMC Amendment 14 MPAs.

*Response:* Consistent with SAFMC's Amendment 14, which does not include a VMS requirement, NMFS determined that it was unnecessary to implement a VMS requirement for HMS vessels. NMFS has several other VMS requirements in place for HMS vessels including all vessels with gillnet gear during certain times of the year, BLL vessels in the vicinity of the mid-Atlantic shark closed area, and all vessels with PLL gear on board year-round. To the extent that some of those vessels would fish in the vicinity of the MPAs, NMFS would be able to track their movements. However, most vessels that do not fish with PLL and maintain directed or incidental shark permits in the South Atlantic are not required to have VMS.

*Comment 4:* NMFS should use the terms "closed areas" or "area closures" to describe the locations where the proposed regulations apply to avoid confusion on the intent of the MPAs (since they are for snapper/grouper, and not sharks) and to improve compliance by fishermen. "Marine protected area" is not a term used in the Magnuson-Stevens Act. NMFS should clarify how and why closures for fisheries management are part of the official MPA classification system.

*Response:* NMFS chose to use the term Marine Protected Area or MPA because that is the specific language provided in Amendment 14. Although the intent of the MPAs is to protect snapper grouper species, using nomenclature in this final rule that differs from that used to refer to the closures in Amendment 14 may create confusion. As a result, NMFS is referring to the closures in the same way as the SAFMC.

*Comment 5:* NMFS should prohibit the use of longline gear in existing and new MPAs. The overall amount of bycatch within MPAs may not be minimal when considered in the context of the relevant MPA and the number of species and individuals found within the MPA.

*Response:* NMFS is prohibiting the use of BLL gear in all of the preferred SAFMC MPAs because those are the areas the SAFMC has determined to be important for certain grouper species that are sometimes caught incidentally on shark BLL gear.

*Comment 6:* The ASMFC Spiny Dogfish and Coastal Sharks Management Board would like NMFS to reconsider

the closures off of North Carolina. Specifically, the Board asks that the duration of the closure be reduced to run from January 1 – May 14. This request is based on the Coastal Sharks Technical Committee's recommendation for a state water closure from May 15 through July 15 from Virginia to New Jersey. This state water closure is designed to protect large adult female sandbar sharks when they are on the pupping grounds. The closure off of North Carolina was designed to protect juvenile sharks in the nursery area during the winter; however the majority of the small sharks have migrated out of that area by mid-May.

*Response:* The mid-Atlantic shark closed area was implemented to protect juvenile sandbar sharks and all life stages of prohibited dusky sharks. Survey data collected from the NOAA fisheries research vessel Delaware II from April through May 2007 indicate that the majority of sandbar sharks caught in the mid Atlantic shark closed area were juvenile (56-percent immature vs. 44-percent mature). Therefore, maintaining the mid-Atlantic closed area should continue to reduce the number of interactions of BLL gear with sandbar and dusky sharks as well as reduce the number of interactions with immature sandbar and dusky sharks. This will provide positive ecological benefits for both of these overfished shark stocks. Furthermore, measures implemented by the ASMFC are not yet finalized. Once finalized measures are in place, NMFS may consider taking additional action to complement state measures. Implementing these measures before they are finalized and implemented in the ASMFC Coastal Shark FMP could result in inconsistent management measures.

*Comment 7:* The SAFMC and the South Carolina Department of Natural Resources support the MPAs and maintaining the current time/area closure as proposed in the draft amendment.

*Response:* This final action will implement the MPA provisions in Amendment 14 and maintain the current time/area closure.

## 6. Reporting

*Comment 1:* NMFS should take action to ensure that fishermen report their landings correctly and honestly as most fishermen do not currently provide accurate reports.

*Response:* The regulations require fishermen to submit accurate and truthful reports on their fishing activities. NMFS can and does verify logbook reports and catch rates with

observer reports, as needed. If fishermen and/or dealers choose not to abide by the regulations, then they may face enforcement action.

*Comment 2:* NMFS received many comments on the dealer reporting timeframe, including: NMFS should consider stronger restrictions on dealer reporting; NMFS should allow two-weeks for dealer reports to be submitted; 10 days is acceptable for the report to be postmarked, but not for NMFS to receive it; NMFS should consider more frequent reporting; NMFS should consider 24 hour reporting for shark dealers; NMFS should consider electronic reporting for dealers (once a week); dealers still need to be able to fax reports; more frequent reporting is not needed. NMFS should take action against dealers that are not reporting; NMFS should not renew a dealer permit if they don't report on time; making reports "received by" will not allow fishermen to know if NMFS got their report on time; and NMFS should provide confirmation numbers when dealer reports are received.

*Response:* NMFS prefers to require dealer reports be received within ten days of the end of the reporting period at this time because a "received by" requirement can be tracked by NMFS, the dealers, and enforcement more easily than a "postmarked" requirement. NMFS is concerned about dealers that are not reporting and is working with the Office of Law Enforcement to pursue shark dealers who do not meet their reporting obligations. Additionally, given recent issues with dealers not realizing that substantial landing reports were not received by NMFS, NMFS feels that requiring reports to be "received by" a certain day will aid in ensuring all reports are received by NMFS in a timely manner. The final action does not require twenty-four hour reporting because such reporting would result in an unduly increased reporting burden for shark dealers at this time. NMFS may consider additional modifications and/or adjustments to reporting frequency for future implementation.

NMFS is currently capable of accepting electronic reports from some dealers who have access to that data system in the Southeast Fisheries Science Center and faxes of shark dealer landings. NMFS does not issue confirmation numbers when shark dealer reports are received; however, submitting dealer reports by FAX or electronically includes a date/time stamp in addition to whether the transmission was successful or not. Shark dealers may also consider using

certified mail to provide verification that the correspondence was received.

*Comment 3:* NMFS should be more proactive and contact dealers as the quotas fill up.

*Response:* Significant overharvests in the shark fishery in recent years have occurred because shark dealers were not submitting their reports, or verifying that their reports were received by NMFS in the time period required by NMFS regulations. NMFS is working to ensure better compliance with its reporting regulations by encouraging shark dealers to report on time or face possible enforcement action for failing to do so.

*Comment 4:* Does NMFS have a specified time within which it must turn around dealer reports?

*Response:* NMFS provides shark landings reports, by complex or species, on a frequent basis to ensure participants are aware of catches in the shark fishery. NMFS does not have a specified time frame as to when it provides landings reports; however, efforts are being made to provide more frequent shark landings updates in light of the final action to close seasons when a species/complex quota has reached 80-percent of their quota.

*Comment 5:* NMFS should stick to its existing reporting system rather than create a new one.

*Response:* NMFS will not institute a new reporting system for shark dealers or fishermen in this final rule.

*Comment 6:* NMFS should not allow sharks to be listed as unclassifieds and, if dealers continue to report unclassifieds, they should have their permits revoked. Unclassified sharks should not be counted against the sandbar shark quota because the sandbar shark quota for the research fishery is already miniscule.

*Response:* Current regulations require that all sharks landed be identified and reported at the species-level. This final action adds language to clarify this requirement. While reporting sharks as "unclassified" violates the regulations, and NMFS has recently completed shark identification workshops to improve shark dealers' identification skills, NMFS must account for unclassified shark landings to produce timely and accurate shark landings reports and because this data is used in stock assessments. Under this final action NMFS will use species composition data from the observer reports outside the shark research fishery to determine which proportion of unclassified sharks should be deducted from the appropriate quotas (i.e., sandbar, non-sandbar LCS, SCS, and pelagic sharks). This methodology is consistent with

how unclassified sharks are treated in stock assessments. Shark dealers that continually report sharks as unclassified will be reported to NOAA Office of Law Enforcement and may face enforcement action.

NMFS proposed counting all unclassified sharks from shark dealer reports as sandbar sharks to provide dealers with an incentive to identify sharks to the species level because if the quota for sandbar sharks were filled, they would no longer be able to purchase sandbar sharks. However, NMFS believes that allocating landings to the appropriate complex/species based on observer data is a more accurate means of accounting for unclassified landings. Furthermore, NMFS is concerned that counting all unclassified sharks as sandbar sharks may result in the shark research fishery closing prematurely.

*Comment 7:* NMFS received a comment stating that a dealer had inadvertently reported all sharks landed in the past as sandbar sharks and that they knew of no dealers that identify sharks at the species level.

*Response:* All dealers are required to report shark landings at the species level. NMFS instituted a requirement to attend shark identification workshops to assist dealers in properly identifying sharks in order to obtain more accurate landings data.

*Comment 8:* NMFS received a comment wondering how the stock assessments can use the dealer data because of the lack of species-level landings data for sharks.

*Response:* Many dealers do report at a species-specific level. However, not all do. Thus, stock assessment scientists assign unclassified sharks to a species/complex group based on species composition data from the observer program. Regional and temporal species composition data attained from observed trips are summarized and applied to the unclassified sharks to estimate the proportion that should be assigned to respective quotas and complexes.

*Comment 9:* NMFS received a comment in support of the workshops for shark identification because dealers have observed a drastic reduction in the number of sharks that are not being identified properly.

*Response:* NMFS is encouraged by the results of the shark identification workshops for dealers. Better shark identification should lead to more accurate landings data, which should improve the quality of data used in stock assessments.

*Comment 10:* NMFS received several comments on the "dealer" definition

(i.e., who is required to have a dealer permit), including: NMFS should provide the current definition of a shark dealer; the current definition is satisfactory; the proposed dealer definition is appropriate; the first receiver cannot be the shark dealer; an intermediary on land is needed solely for transport; and, the definition should take into account multiple transfers.

*Response:* The current definition of a shark dealer is a person that receives, purchases, trades for, or barter for Atlantic sharks from a fishing vessel of the United States (50 CFR 635.4(g)(2)). When NMFS implemented the shark identification workshops, many dealers were confused as to whether they needed to attend a workshop because they buy sharks from another dealer, who buys sharks from a fishing vessel. Because the sharks originally came from a fishing vessel, these secondary dealers had obtained a shark dealer permit. To clarify who needs to attend the workshops and to aid enforcement, this final action modifies the definition of shark dealers and is modified from the proposed definition based on public comments. Specifically, the final action clarifies that shark dealer permits are required only for "first receivers." The definition of a "first receiver" at 50 CFR 635.2 is "entity, person, or company that takes, for commercial purposes (other than solely for transport), immediate possession of the fish, or any part of the fish, as the fish are offloaded from a fishing vessel of the United States, as defined under § 600.10 of this chapter, whose owner or operator have been issued or should have been issued a valid permit under this part."

*Comment 11:* Can federally permitted dealers buy state landed sharks? Do federally permitted dealers have to report state landings?

*Response:* The current regulations at 50 CFR 635.31(c)(4) state that federal dealers may purchase a shark only from an owner or operator of a vessel that has a valid commercial federal permit for shark, except that federal dealers may purchase a shark from an owner or operator of a vessel that does not have a commercial federal permit for shark if that vessel fishes exclusively in state waters (i.e., no federal commercial shark permit). Federal dealer permit holders must report all sharks landed, including those from state waters, and cannot purchase any sharks, caught in state or Federal waters, once the Federal shark fishing season is closed. Additionally, on May 6, 2008, the Spiny Dogfish and Coastal Shark Board of ASMFC voted to require all state dealers to obtain a federal shark dealer permit. As such, when the ASMFC Coastal Shark FMP is

fully finalized and implemented, expected in 2009, state shark dealers from Maine to Florida will be required to obtain a federal shark dealer permit and attend shark identification workshops.

*Comment 12:* NMFS received a comment questioning the mechanism that requires dealers to report on time.

*Response:* All federally permitted shark dealers are required to submit a dealer report on a bimonthly basis. Failure to do so could result in enforcement action.

*Comment 13:* NMFS should implement the strongest possible restrictions to ensure prompt and reliable reporting by dealers, within 24 hours if possible. Landings of 300 to 500-percent of allowable quotas, even if subtracted in subsequent seasons, are simply not acceptable and do not reflect the close attention and precautionary action required to achieve sustainable shark fisheries.

*Response:* Accountability measures for quota overharvests are necessary. The TAC has been reduced considerably and overharvests are accounted for over time. Importantly, the final action includes closing the fishery for a particular species when 80-percent of the quota is reached with five days notice upon filing in the **Federal Register** in order to reduce the likelihood of overharvests. NMFS will also send out e-mail notices and conduct outreach regarding closures upon filing in the **Federal Register**, giving fishermen five days to be notified of a closure. Reduced retention limits and other effort control measures are expected to reduce fishing mortality in the shark fishery. In addition, under the final action, NMFS is changing the reporting requirements for shark dealers so that shark dealer reports must be received by NMFS within 10 days after the reporting period ends. This will ensure timelier reporting and potentially avoid overharvests.

*Comment 14:* NMFS received several comments regarding excess shark landings in state waters and NMFS' coordination with various states, including: NMFS should preempt the State of Louisiana or others as necessary pursuant to authority provided in the Magnuson-Stevens Act (section 306(b)) if shark landings in state waters impact Federal shark fishery management; NMFS should recognize that Federal fishermen are catching adults during designated fishing seasons, while state fishermen are catching juveniles all year long; NMFS should allow Federally permitted fishermen to fish in state waters; NMFS should ensure that state waters are closed at the same times as

Federal waters to protect juveniles; NMFS should consult with the states in order to manage fisheries better; NMFS should require states to abide by Federal rules; and NMFS should coordinate with the ASMFC.

*Response:* Pursuant to the Magnuson-Stevens Act, NMFS has jurisdiction to manage fisheries in Federal waters of the Exclusive Economic Zone (EEZ). Landings in state waters are counted against Federal shark quotas because many shark species inhabit both Federal and state waters, and thus make up one population or stock. NMFS includes state landings in stock assessments for coastal sharks. This practice is consistent with quota monitoring and management strategies for many marine species.

NMFS has been working with the State of Louisiana, and other states, to ensure consistent management strategies for sharks in state and Federal waters due to excessive landings that occurred in Louisiana state waters in 2007. In 2007, the State of Louisiana agreed with NMFS to close its state waters when the federal fishery closed during the third trimester of 2007. Additionally, ASMFC recently voted on final management measures for a coast-wide state shark plan for states in the Atlantic Ocean. The final measures included in the ASMFC Coastal Shark FMP are expected to be effective in 2009. Many of the final measures in the ASMFC Coastal Shark FMP are consistent with federal regulations and will require commercial state shark fisheries to open and close with federal openings and closures. The implementation of ASMFC's Coastal Shark FMP could potentially lead to similar measures being implemented in the Gulf of Mexico.

*Comment 15:* NMFS should provide information in the shark landings update on the percentage of total shark landings that are state and Federal.

*Response:* Federal dealers must report all landings; however, they are not required to differentiate which landings are purchased from Federal vessels and which shark products are purchased from state vessels (if a Federal dealer also has a state dealer permit). Current reporting requirements make it difficult to determine state versus Federal landings, although NMFS generally does not need to distinguish these landings because all landings are used in stock assessments and are counted against the federal shark quota.

*Comment 16:* The stock assessment does not take the area inside state waters into consideration.

*Response:* Stock assessments include both fishery dependent and fishery

independent landings and effort data from state and Federal waters.

*Comment 17:* NMFS should not mandate that all shark fishing stop entirely once the sandbar quota is met.

*Response:* NMFS will not close both the sandbar and non-sandbar LCS fisheries if either quota is met. Rather, NMFS will close the sandbar and non-sandbar LCS quota, individually, if either fishery reaches 80-percent of its respective quotas.

*Comment 18:* The State of Florida supports decreasing the length of time it takes to supply NMFS with landings information used to manage the shark fishery. NMFS should also decrease the time it takes to make this information available to the public. The time required for NMFS to process such information should be established in a rule.

*Response:* NMFS makes every attempt to provide timely reports of shark catches to constituents on a frequent basis in order for fishermen to plan their activities accordingly. However, it is also necessary to ensure that shark landings data are accurate prior to making them available to the public. NMFS will attempt to provide more frequent shark landings updates in the future.

## 7. Seasons

*Comment 1:* The change to one commercial season would lead to derby fishing.

*Response:* NMFS believes that a commercial season that opens January 1 and remains open until 80-percent of the quota is achieved, coupled with the significantly reduced retention limits for directed permit holders, should adequately prevent derby fishing. Derby fishing is more likely when seasons are shorter in duration, and when retention limits are large enough to encourage targeting of a specific species. The final action results in one season, opening January 1. Additionally, the season is expected to remain open for most of the year as fishermen outside the research fishery are not expected to make trips targeting non-sandbar LCS because of reduced retention limits and the prohibition on the retention of sandbar sharks.

*Comment 2:* NMFS received several comments including a comment from the State of Florida regarding the proposal to open shark seasons on January 1, including: NMFS should consider the fact that not all shark species are present in all regions in equal abundance on January 1; July may be a more appropriate time to open the season; January 1 may be good for sandbar sharks but not other species;

opening the season at another time may result in the quota being filled before sharks arrive in some regions; the season should be opened on January 1.

*Response:* NMFS is aware of the fact that sharks are migratory and present in different areas, at different levels of abundance, at different times of the year. In this final action, NMFS will only allow landings of sandbar sharks by a limited number of vessels selected to participate in a shark research fishery. Therefore, only vessels participating in this fishery will be authorized to target sandbar sharks, and only when a NMFS-approved observer is on board. Vessels outside the research fishery would be allowed to keep 33 non-sandbar LCS for directed permit holders and 3 non-sandbar LCS for incidental permit holders. NMFS anticipates that this reduced retention limit will likely result in directed shark fishermen no longer targeting non-sandbar LCS outside the research fishery. Rather, shark fishermen would be authorized to keep non-sandbar LCS incidentally caught while targeting other species. Given that fishermen outside the research fishery are not expected to target non-sandbar LCS, NMFS expects that the shark seasons would be open longer, and fishermen in the regions that have non-sandbar LCS present later in the year would still be able to harvest non-sandbar LCS when they are present. In addition, opening the season on January 1 should allow the shark fishery to overlap with open seasons for other non-shark species and may reduce regulatory discards that may occur as a result of keeping the shark season closed until later in the year.

*Comment 3:* NMFS received numerous comments, including comments from the ASMFC and the State of Florida that NMFS should open the season in July instead of January 1 so the season would be open when sharks are present in all areas and to prevent fishing mortality during shark pupping season. Other comments included: NMFS should not allow shark fishing during April, May, and June as these months are when shark pupping occurs and state waters should be closed from May 15 through July 15 to protect pupping; considering the size of the quota, shark migration patterns, and the ASMFC closure, it is likely that the quota would be harvested before sharks become available to fishermen in the North Atlantic; beginning the fishing season on July 16 would allow the quota to be shared geographically; opening the fishing season in July would reduce mortality of pregnant females and ensure that northern states have access to the fishery.

*Response:* Opening the season on January 1 and keeping it open until 80-percent of a quota is achieved may result in pregnant or neonate sharks being landed along with other sharks. However, given the low retention limits for non-sandbar sharks outside the research fishery and because fishermen will not be allowed to retain sandbar sharks outside the research fishery, NMFS expects that fishermen with directed shark permits outside the research fishery will no longer target non-sandbar LCS. This should reduce overall shark mortality, including mortality of pregnant females during pupping season. The retention limits should also allow fishermen to keep non-sandbar LCS that they catch while targeting other species. If the season is closed from April through June or July, vessels that land sharks while targeting other species will have to discard all sharks. The ASMFC is implementing a Coastal Shark FMP for sharks in state waters from Maine through Florida. Since most shark pupping occurs in state waters, NMFS feels the ASMFC plan may be more appropriate for addressing fishing mortality of pregnant females or neonate sharks. However, now that the ASMFC plan is expected to be implemented in 2009, NMFS may modify the season closure in the future as a result of the ASMFC shark plan.

*Comment 4:* NMFS should provide more advance notice of season openings because fishermen have had a hard time planning how much bait they need to buy, planning for freezer spaces, etc.

*Response:* NMFS must complete proposed and final rulemaking prior to the establishment of shark seasons. Under any final action establishing an annual shark season, NMFS will open the fishing season on or about January 1 of each year (except 2008). The season will likely remain open longer than usual, dependent upon available quota. Rulemaking in the **Federal Register** prior to the opening of the subsequent season's start date (on or around January 1) will provide the available quota, retention limits, and other pertinent information.

*Comment 5:* NMFS should implement one shark fishing season.

*Response:* NMFS is implementing one season, starting January 1 each year. This date is more likely to overlap with open seasons for other BLL and gillnet fisheries, and also provides fishermen a full calendar year to harvest available quota.

*Comment 6:* NMFS should ensure that smaller amounts of shark are consistently available throughout the year to help increase the price and marketability of sharks since restaurants

would know they could count on it year round. Currently, with such short seasons, there is not really a market.

*Response:* Short seasons under existing trip limits may quickly flood markets, depressing prices for some shark products, particularly shark meat. Shark meat prices are more likely to be affected by the short seasons because there is less demand for shark meat than for shark fins. The majority of shark fins are exported to other countries and prices for shark fins tend to remain higher and more stable than shark meat. In the past, fishermen with directed shark permits were able to make profitable trips exclusively for sharks. Reduced retention limits and prohibition on retaining sandbar sharks outside the research fishery should reduce the likelihood that fishermen will make trips targeting non-sandbar LCS outside the research fishery. Rather, fishermen are more likely to harvest non-sandbar LCS incidentally while targeting other species. NMFS expects that a fishing season that opens on January 1 each year with lower retention limits will result in smaller quantities of shark product being available for a larger proportion of the year. This could conceivably increase demand and marketability of shark products because the availability of meat and fins would be more reliable throughout the year compared to the past when shark seasons were only open for short periods of time. This increased demand for shark products on behalf of wholesalers may translate to elevated prices received by shark fishermen for shark meat and fins.

*Comment 7:* NMFS should elaborate on the reasons that trimesters were originally implemented for the commercial shark fishery. Trimesters may still be necessary to reduce fishing mortality.

*Response:* Trimesters were originally implemented as a way to increase the availability of shark meat throughout the year while also reducing fishing mortality during peak pupping seasons and addressing other bycatch concerns. This final action implements significant measures to reduce fishing mortality of sharks (predominantly by modifying quotas, retention limits, and species authorized to be landed in commercial and recreational fisheries) and also implements measures that are expected to result in small amounts of shark meat to be available in the markets year-round.

These final measures should reduce the mortality of pregnant females. Furthermore, the closed area off the coast of North Carolina, which is important habitat for dusky and sandbar

sharks, will continue to be in effect. NMFS does not expect that fishermen will be able to make a profitable trip "targeting" sharks with the preferred retention limits and because of the fact that sandbar sharks may not be possessed outside the shark research fishery. The resulting incidental fishery will likely translate into significant benefits to shark populations as a whole while also eliminating the need to maintain trimesters.

*Comment 8:* Closing the season when landings reach the 80-percent threshold should be sufficient, but can the other 20-percent of the quota be filled in five days? NMFS should consider closing the shark fishery at 90 to 95-percent of the quota and consider re-opening a season if the quota has not been caught for a given season.

*Response:* NMFS requested public comment specifically on setting 80-percent as a threshold for closing the fishery because it allows a substantial percentage of the allowable harvest to occur, yet allows a sufficient buffer to prevent overharvest from the time the 80-percent is reached until the time NMFS can actually close the fishery. NMFS' goal is to allow fishermen to harvest the full quota without exceeding it in order to maximize economic benefits to stakeholders while achieving long-term conservation goals and preventing overfishing. Closing the fishery via appropriate rulemaking, while providing at least a five-day notice of a closure (upon filing of the final rule with the Office of the Federal Register and the availability of the final rule for public inspection), should allow fishermen to complete fishing trips that have already been initiated and/or provide fishermen the chance to catch additional quota if they embarked on additional trips prior to the closure. As mentioned previously, the reduced retention limits and the fact that fishermen outside the research fishery will not be allowed to land sandbar sharks is expected to reduce the number of trips targeting non-sandbar LCS and keep the shark season open year-round. Additionally, NMFS must take into account state landings that continue to occur after closure of the Federal fishery.

NMFS believes that, given the two week reporting period for dealer reports and the potential for late reporting, closing the fishery when landings reach 90- to 95-percent of the quota would likely result in overharvests. Overharvests will result in reduced quotas in the future since all overharvests will be accounted for when establishing subsequent seasons and quotas.

*Comment 9:* NMFS should allow more time prior to closing the seasons. A 5-day notice will not work for PLL fishermen because their trips are long.

*Response:* PLL gear is not the primary gear-type used to harvest sharks. Most sharks are landed on BLL or gillnet gear on trips that last several days. Fishermen deploying PLL gear generally target tunas and/or swordfish depending on the time of the year and location. Therefore, NMFS does not expect the rulemaking process for closing the shark fishery, which would provide at least a five day notice upon filing of the final rule with the Office of the Federal Register and the availability of the final rule for public inspection, to have adverse impacts on vessels deploying PLL gear. Before the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks, the shark fishery was closed via appropriate rulemaking with five days' notice; therefore, there is a precedent for this amount of time prior to taking action.

*Comment 10:* NMFS should consider a 3-day warning prior to closing seasons to prevent overharvests, consistent with the notice granted in the bluefin industry. This would better assure that quotas are not exceeded. If NMFS does not decrease the closure time to three days, and instead keeps five days, NMFS should adopt the trigger of 70-percent rather than 80-percent.

*Response:* In closing the fishery through appropriate rulemaking, NMFS will provide at least a five day notice for closures to maximize the proportion of the quota that fishermen may harvest without exceeding the quota and to allow time for notifying fishermen of a closure. When the final rule is filed with the Office of the Federal Register and available for public inspection, NMFS will send out e-mail notices and other outreach materials to notify the public of the fishery closure within at least 5 days. NMFS anticipates that the notice will publish in the **Federal Register** approximately one day after filing, and then the fishery would officially close no earlier than five days from the original filing date. NMFS believes closing the fishery for individual species or species complexes with at least five days notice upon filing in the **Federal Register** is adequate to prevent overharvests. Historically, shark trips have been 1-4 days. Therefore, a minimum of five days' notice should be adequate because it should give fishermen enough time to complete trips that are already in progress. Significant reductions in retention limits and the fact that fishermen outside the research fishery cannot retain sandbar sharks should also reduce the potential for

overharvests in the period between meeting the 80-percent threshold and when the fishery is actually closed a minimum of five days later.

*Comment 11:* NMFS should predict how long the season should remain open to fill the quota based on past catch rates.

*Response:* In recent years, seasons have been set based on available quota, past catch rates, and other considerations. Given the final action, NMFS feels that continuing this practice may continue to result in significant overharvests and may not be the best strategy for ensuring that sandbar, dusky, and porbeagle shark populations rebuild. Overharvests in 2006 and 2007 may be indicative of past catch rates not being appropriate indicators of future catch rates because of the fact that in those years, catch rates were greater and the quota was smaller, leading to overharvests. In addition, significant changes in quotas, authorized species, and retention limits would further complicate establishing seasons in advance.

*Comment 12:* NMFS needs to analyze the length of trips that land sharks and base the time needed to notify the fishery on the length of those trips.

*Response:* Observer data indicate that most trips targeting sharks last between 1-4 days depending on the region, season, and amount of sharks that are landed. However, this duration corresponds to past retention limits that are being reduced substantially for directed permit holders. Five days was selected as a reasonable minimum amount of time for fishermen to get word about a fishery closure and either finish a current trip without discarding dead sharks, or initiate a trip for another species prior to the closure while keeping the ability to land sharks incidentally. NMFS anticipates that the significant reduction in retention limits and the prohibition on retaining sandbar sharks outside the research fishery will result in most fishermen targeting other species and incidentally landing non-sandbar LCS.

*Comment 13:* NMFS needs to look at past data to determine whether a 80-percent threshold is adequate to prevent overharvests based on how much quota is caught after the seasons.

*Response:* NMFS selected the 80-percent threshold for closing the season, with a minimum of five days' notice upon filing of the final rule with the Office of the Federal Register, because it should ensure that the majority of the quota is harvested without exceeding the quota. Giving fishermen the opportunity to harvest most of the quota within a given season is important



because the final action carries forward only underharvests for species that are not overfished, experiencing overfishing, or of unknown status.

#### 8. Regions

*Comment 1:* NMFS received several comments regarding regions. Comments in favor of maintaining three regions under the status quo included: NMFS should assess the impacts of moving to one region; NMFS should describe the rationale for moving to one region; NMFS should not implement one region; having one region ignores the stock assessments and the temporal nature of the fishery; NMFS should implement separate permits, separate fishing zones, and separate quotas, so that fishermen in one zone are not penalized for a quota overharvest that occurs in another zone; the ASMFC requests a minimum of two management regions (Gulf of Mexico and Atlantic States) to ensure equitable and biologically sound geographic distribution of quotas; a one-region plan could reduce or eliminate any quota for Atlantic States if Gulf of Mexico states overharvest; the Gulf States do not have coordinated management and have overharvested in excess of 200-percent in recent years; under one management region, the ASMFC would have reduced or zero quotas for years subsequent to Gulf overharvests.

NMFS also received several comments opposed to maintaining the three regions, including: NMFS should either divide quota equally among regions or have one region since quotas are so low; Gulf of Mexico and South Atlantic stocks should be managed as one unit.

NMFS received numerous comments from Texas Parks and Wildlife, the Gulf of Mexico Fishery Management Council, ASMFC, Mississippi Department of Marine Resources, and members of the general public in favor of maintaining more than one region. Commenters suggested reasons for maintaining more than one region, including: the best scientific evidence available indicates that the Gulf of Mexico and the South Atlantic stocks are separate; genetic evidence has shown separate stocks of some species between the Gulf and South Atlantic; shark management should account for separate stocks and separate the quota accordingly; blacktip sharks are healthy in the Gulf of Mexico; bycatch issues are unique to each region; and, moving to one region ignores stock assessments and the temporal nature of the fishery, which was identified during the previous amendment.

*Response:* In the Draft EIS, NMFS proposed merging the status quo's three regions into one region to simplify quota monitoring and to prevent derby-style fishing and potential overharvests that could occur as a result of attempting to allocate smaller quotas to regional and trimester seasons. The impacts of establishing only one region instead of three were assessed in the Draft EIS for Amendment 2. The analyses indicated that the overall economic impacts could be negative in regions (i.e., North Atlantic) that do not have sharks present in their waters year-round if the fishery closed early in the year. The ecological impacts of implementing one region were expected to be neutral.

Based on public comment, NMFS has decided to implement two regions, the Gulf of Mexico and the Atlantic, rather than one region as originally proposed. Maintaining two regions has several advantages, including: it adheres to the stock assessment for blacktip sharks which assessed this species separately in the Gulf of Mexico and Atlantic; it accounts for overharvests that occurred in the Gulf of Mexico and Atlantic in 2007 more equitably; it allows for unique quotas to be implemented in each region that account for different species composition in each region; and it maintains the flexibility to implement unique regulations in the Gulf of Mexico and Atlantic Ocean.

The 2006 LCS assessment assessed blacktip sharks as two distinct populations in the Gulf of Mexico and Atlantic. Unique results were found for each population with the Gulf of Mexico population healthy and the Atlantic stock unknown. The assessment recommended maintaining current harvest levels in both regions. NMFS prefers measures consistent with the stock assessment by maintaining two regions: the Gulf of Mexico and Atlantic. The blacktip shark was the only species assessed as distinct, regional populations.

At this time, NMFS does not issue unique permits based on geography within the Atlantic, Caribbean, and Gulf of Mexico. This type of permit was not considered during this rulemaking.

*Comment 2:* NMFS should have one region because, since NMFS went into regions, we have been going over the quota.

*Response:* There are several factors that may be the cause of recent overharvests. These overharvests have likely occurred because of increased fishing effort, inconsistent reporting on behalf of the dealers, and the fact that previous years' overharvests are taken off subsequent years' quotas resulting in smaller regional quotas. As quotas

decrease and effort stays the same, the likelihood of overharvests increases. The rationale for two regions is provided in response to Comment 1 directly above and elsewhere in the preamble to this rulemaking.

*Comment 3:* NMFS should describe the original reasoning for establishing the three regions.

*Response:* The regions were established in regulations implementing Amendment 1 to the 1999 FMP in 2003 because of spatial differences in fishery practices, variable catch-per-unit-effort (CPUE) between regions, and to afford managers the flexibility to adjust regional quotas to reduce mortality of juvenile and pregnant female sharks.

*Comment 4:* NMFS should create a separate region for the Caribbean.

*Response:* The Caribbean is currently managed as part of the South Atlantic region. This final action includes the Caribbean in the Atlantic region. Permit data indicate that there are not any commercial shark fishing permits and only one shark dealer permit in the Caribbean region. In addition, NMFS is in the process of initiating rulemaking to address some of the unique aspects of Caribbean fisheries for HMS.

*Comment 5:* NMFS should change the regions so that the Florida Keys are entirely in the South Atlantic or entirely in the Gulf of Mexico. The State of Florida recommends that the existing regions be maintained, however, both the Gulf and Atlantic coasts of Florida should be kept in the same region to facilitate improved management and enforcement.

*Response:* NMFS implemented separate regions for the Gulf of Mexico and South Atlantic in Amendment 1 to the 1999 FMP. The existing boundary between the regions was adopted because it is consistent with the boundary defined by the Gulf of Mexico and South Atlantic Fishery Management Councils and by ASMFC. However, since implementing that boundary, NMFS has consistently considered, for quota monitoring purposes, any landings in the Florida Keys to be part of the Gulf of Mexico region. As such, in this final action and based on the comments received, NMFS is matching practice with the regulations, and is redefining the Gulf of Mexico to ensure that catch near or directly south of the Florida Keys is considered to be within the Gulf of Mexico region. NMFS does not expect this to change fishing practices as logbook data indicates that most fishing in the areas occurs near and within the Florida Keys.

### 9. Recreational Measures

*Comment 1:* NMFS should maintain the same standards for recreational and commercial fisheries. Since the commercial industry reports many unclassified or unclassified sharks, the commercial industry should be regulated based on misidentification as well.

*Response:* The majority of sharks landed commercially are reported as unclassified by shark dealers, not fishermen. NMFS has implemented shark identification workshops for shark dealers which are expected to provide shark dealers with the knowledge and skills to properly identify the sharks that they purchase. Recreational fishermen generally do not see sharks as often as commercial fishermen targeting sharks. Thus, commercial fishermen may be more adept at shark identification.

*Comment 2:* The preferred alternative would set a bad precedent in allowing a fishery that caused the decline in shark populations to continue on a limited basis, while the public cannot fish for the same shark species. The commercial fishermen should be allowed to catch the same shark species as the recreational fishermen. The ASMFC requests allowing recreational possession/take of all species that may be harvested by commercial fishermen to keep the shark fishery equitable to all sectors and help establish identical species groups.

*Response:* The final action allows recreational permit holders to possess all non-ridgeback LCS and tiger sharks. These species of sharks have external characteristics that are easy for recreational anglers to properly identify. NMFS proposed to add blacktip, spinners, bull, and finetooth sharks to the list of prohibited shark species in the draft Amendment 2 to the Consolidated HMS FMP. However, based on public comment, NMFS decided to allow recreational anglers to land these sharks. NMFS is allowing recreational anglers to land these species because of extensive public comment that was received in favor of allowing recreational anglers to land these species. NMFS is not authorizing recreational anglers to land sandbar sharks and silky sharks because recreational anglers may confuse these species with dusky sharks, which are on the list of prohibited shark species. NMFS is only allowing participants in the shark research fishery to land sandbar sharks commercially, thus, precluding the vast majority of commercial fishermen from landing sandbar sharks.

Silky sharks are authorized for landing in commercial fisheries because there is a higher likelihood that these sharks may be discarded dead than if they were landed in recreational fisheries. Moreover, commercial fishermen are more adept at distinguishing between silky sharks and sandbar or dusky sharks. Prohibiting silky sharks in commercial fisheries would result in more significant economic consequences than prohibiting them in recreational fisheries because commercial fishermen are allowed to sell the fins and flesh of sharks that are caught in accordance with applicable regulations. There is not a significant targeted fishery among recreational or CHB anglers for spinner sharks, therefore, economic impacts would be less severe among this group of stakeholders.

*Comment 3:* The recreational and commercial sectors contribute nearly equivalently towards mortality of sharks, and reductions in mortality are absolutely necessary.

*Response:* NMFS is implementing measures consistent with recent stock assessments to prevent overfishing and/or to rebuild stocks of porbeagle, dusky, and sandbar sharks. Concurrently, NMFS has decided not to allow increased landings of blacktip sharks in the Gulf of Mexico and Atlantic Ocean. Both commercial and recreational shark landings are included in stock assessments. While commercial fisheries generally comprise the majority of shark landings, recreational landings are also a significant component of overall shark mortality. Additional measures are necessary to reduce fishing mortality on several shark species. Modifications to quotas, authorized species, and retention limits are expected to prevent overfishing and to rebuild overfished stocks. For example, sandbar sharks will only be landed by a small number of commercial participants in the shark research fishery subject to a commercial quota that represents an 80-percent reduction in landings of sandbar sharks compared to previous years. Recreational fishermen will not be able to retain sandbar sharks due to their overfished status and the potential for confusion with prohibited dusky sharks.

*Comment 4:* NMFS should consider additional alternatives for the recreational industry. The alternative suites contain either status quo or closure of all the recreational fisheries.

*Response:* The analysis of recreational measures includes more alternatives than status quo and closing the fishery. Alternative suites 2 through 4 in the Amendment 2 to the Consolidated HMS

FMP would modify the authorized shark species for recreational fishermen to include those that can be positively identified. These alternatives have been modified in the Final Amendment 2 to the Consolidated HMS FMP to include all non-ridgeback LCS and tiger sharks as authorized species in recreational shark fisheries.

*Comment 5:* NMFS should describe the data or analysis used to justify the proposed authorized species for recreational fisheries. There is no precedent for "easily-identifiable." NMFS needs to make an effort to educate anglers before assuming they cannot identify what they are catching. The State of Georgia commented that NMFS should only allow sharks without an interdorsal ridge to be landed, thereby improving identification and reducing confusion. The State of Florida indicated that sandbar and dusky sharks can easily be differentiated from many other shark species by the presence of an interdorsal ridge.

*Response:* NMFS only included shark species that are readily identifiable by recreational participants who may not interact with a large number of sharks and therefore may not be able to accurately identify sharks. NMFS specifically requested public comment on the proposed list to be authorized for recreational participants and has modified the final list as a result. The final measures allow any non-ridgeback LCS, tiger sharks and the current list of pelagic and SCS to be landed by recreational anglers. The absence of an interdorsal ridge and/or the distinctive black vertical stripes on tiger sharks should allow recreational anglers to determine if a shark may be possessed or not. NMFS intends to disseminate information for recreational permit holders on HMS regulations and external characteristics for positive identification of authorized shark species.

*Comment 6:* The recreational fishery should be subject to 100 percent observer coverage.

*Response:* Recreational permit holders can request to take an observer onboard to monitor fishing activities; however, they are not required to carry observers. Observers are placed on commercial fishing vessels as a requirement of the biological opinion for the shark fishery, to verify logbook and dealer reports, and to aid managers in understanding the fishery. To date, the biological opinion issued under the Endangered Species Act for the shark fishery has not required observer coverage in the recreational fishery. In addition, recreational fishing vessels are not required to obtain a U.S. Coast Guard

safety inspection, which is a requirement for placing observers on commercial vessels to ensure that the vessels have all the required safety equipment. As such, it is difficult to place observers on recreational vessels.

*Comment 7:* NMFS received several comments regarding outreach efforts on shark identification to the recreational sector, including: NMFS should release an identification guide similar to the Rhode Island Sea Grant guide; recreational fishermen care about positive identification; NMFS should send all permit holders the \$20 shark identification book instead of shutting down the fishery; NMFS should explore identification workshops for recreational fishermen; NMFS needs to find better ways to educate the public to ensure positive identification; NMFS should use educational tools to improve identification; and, recreational fishermen may confuse porbeagle sharks with shortfin makos.

*Response:* In 2003, NMFS, in conjunction with Rhode Island Sea Grant, released a guide to Sharks, Tunas, and Billfishes of the U.S. Atlantic and Gulf of Mexico. While the guide is currently out of print, additional copies are being printed and should be available by late summer. Additional materials containing similar information are currently available at: <http://seagrant.gso.uri.edu/bookstore/index.html>.

NMFS is also working on additional outreach materials such as a one page quick identification guide to improve identification and understanding of regulations among recreational anglers. These outreach materials would be either free or available at a low cost to ensure that all permit holders have access to them. NMFS has recently implemented shark identification workshops for shark dealers and other interested members of the public. While not mandatory for recreational anglers, participants in any HMS sector or the general public may attend. These workshops provide anglers, dealers, and commercial fishermen with the ability to properly identify shark carcasses.

*Comment 8:* NMFS received several comments, including comments from the State of Florida, the State of Mississippi, the Gulf of Mexico Fishery Management Council, Texas Parks and Wildlife Department, South Carolina Department of Natural Resources, and the ASMFC regarding the shark species that should be included on the list of recreationally authorized shark species. Comments included: spinner, silky, bull, and blacktip sharks should be included in the list of species authorized for recreational anglers

because fishers are capable of accurately identifying shark species; common thresher sharks should stay on the list of species authorized for recreational anglers; NMFS should not propose restricting recreational anglers from keeping blacktip sharks in the Gulf of Mexico if the stock is not overfished or experiencing overfishing; spinners are not endangered, nor are they depleted; the status of spinner or bull sharks has not been assessed, therefore, prohibiting the capture of blacktip and bull sharks would be an overly risk-averse strategy considering that the status of blacktip sharks (at least in the Gulf of Mexico) is satisfactory; identification is only a problem for species that cannot be identified externally; eliminating the retention of a healthy species of sharks, based on the assumption that they might be misidentified is subjective and is definitely not sound fishery management practice; NMFS is mandated under the Magnuson-Stevens Act (NS 1) to strive for optimum sustainable yield and blacktip status in the Gulf of Mexico is healthy; NMFS' stated reason is concern over angler misidentification with sandbar and dusky sharks, however, these species may be readily identified by their interdorsal ridges; the list is acceptable, except for oceanic whitetip and hammerhead sharks. Do not allow the recreational catch of these two species as scientific studies show they are in decline; allowing the recreational harvest of blacktip and spinner sharks would therefore have no negative impact on sandbar and dusky sharks; silky sharks can be confused with dusky sharks and should remain off the list that recreational anglers may land; NMFS should not prohibit recreational anglers from landing bull, blacktip, bull, spinner, and finetooth sharks because these species represent 37-percent of recreational shark landings off the State of Florida.

*Response:* The final action will allow recreational anglers to possess all non-ridgeback LCS, including blacktip sharks, tiger sharks, and the currently allowed SCS and pelagic sharks. The presence/absence of an interdorsal ridge and other morphological characteristics, coupled with outreach materials on shark identification for recreational anglers, are likely to reduce the incidence of misidentification in this fishery. Common threshers would also continue to be authorized for landing in recreational shark fisheries as these were not proposed to be prohibited for recreational anglers. NMFS had originally proposed that blacktip and spinner sharks not be authorized in

recreational fisheries because the morphological differences between the two sharks are not obvious to anglers who are unfamiliar with sharks, and because NMFS wanted to ensure that recreational anglers were only landing sharks that could be positively identified. Based on extensive public comment in support of being able to land blacktip, spinner, and bull sharks and the ability of anglers to use the interdorsal ridge (or lack of the interdorsal ridge) to more positively identify sharks, the final action allows these sharks to be landed. Further, NMFS will enhance outreach efforts to ensure that recreational shark fishermen are positively identifying the sharks they catch.

*Comment 9:* NMFS should address the fact that recreational anglers in Delaware, Maryland, and New Jersey are catching lots of pregnant thresher sharks during certain times of the year.

*Response:* NMFS is concerned about recreational anglers catching pregnant female thresher sharks. Recreational fisheries do not have closed seasons like commercial fisheries; therefore, pregnant females may be caught and possessed by recreational anglers. However, a minimum size limit of 54 inches fork-length and a bag limit of one shark (except bonnethead and Atlantic sharpnose) per vessel per trip should minimize the potential for negative impacts to populations of common thresher sharks. Furthermore, this species may be afforded additional protection by shark tournaments that limit the sharks that may be landed to those that are actually eligible to win a prize category.

*Comment 10:* NMFS received a comment suggesting that hammerheads may need to be prohibited for recreational anglers because the IUCN considers them threatened and it is not easy to distinguish between scalloped and great hammerhead sharks.

*Response:* NMFS is not implementing management measures specific to scalloped or great hammerhead sharks in recreational fisheries at this time. NMFS has not yet reviewed stock assessments on these species. A stock assessment has been completed for hammerhead sharks as a dissertation for a graduate student; however, the assessment has not undergone extensive peer-review which is necessary prior to NMFS making any decisions about or based on the assessment.

The IUCN determined that the scalloped hammerhead is "lower risk, near threatened" with an unknown population trend in 1994. In 2001, the IUCN listed great hammerhead sharks as "endangered" with a decreasing

population trend. The recreational bag limit (1 vessel/day) and minimum size (> 54 inch fork length) should preclude overfishing of the scalloped hammerhead shark species. NMFS intends to improve outreach materials available so that recreational anglers would have the tools necessary to distinguish between scalloped and great hammerheads.

*Comment 11:* NMFS should consider the impacts of recreational fishing for sharks and its implications on populations. Specific comments received include: shark tournaments since the 1980s are responsible for a 50-percent reduction in dusky sharks and a 35-percent reduction in sandbar sharks; the stock assessment does not say that recreational anglers have a significant impact on the shark stocks; the recreational angling public has a virtually imperceptible impact on LCS because recreational anglers practice catch and release and have very conservative size limitations.

*Response:* NMFS is aware of the practices of recreational fisheries and their impacts on shark populations. Recreational data have been used in past stock assessments for both sandbar and dusky sharks. Thus, the impact of recreational mortality on shark stocks has been included in these stock assessments. NMFS has implemented a size and bag limit for recreational fishermen to limit effort and protect sharks that have not reached sexual maturity. The Final Amendment 2 to the Consolidated HMS FMP provides recreational landings by species.

*Comment 12:* NMFS should increase enforcement of recreational regulations because participants are not adhering to the 54-inch minimum size for sharks.

*Response:* NMFS intends to take steps to improve outreach to recreational shark anglers to ensure that the public is aware of all the regulations in place for recreational shark fisheries.

*Comment 13:* NMFS should not allow shark tournaments that give monetary prizes. The impacts of such tournaments are unknown and public perception of them is poor.

*Response:* HMS tournament participants are required to possess the necessary HMS permits, to register their tournaments, submit data if selected, and abide by all HMS and tournament regulations for sharks. The shark tournaments are subject to the recreational shark bag and size limits which are quite restrictive in the recreational fishery (1 shark over 54 inches per vessel per day) and, therefore, it is not likely that the majority of fishing mortality is occurring in shark tournaments. Specific measures

concerning tournaments were not proposed, or analyzed, in this rulemaking.

*Comment 14:* NMFS should not propose that recreational fishermen cannot land sandbars and then account for recreational landings by removing the recreational landings (27 mt dw) in establishing the commercial quota for sandbar sharks.

*Response:* Accounting for the recreational landings (27 mt dw) between 2003–2005 is necessary to ensure rebuilding of sandbar sharks and that all fishing mortality is within the TAC. Sandbar sharks can be landed in recreational fisheries outside of NMFS jurisdiction (i.e., state waters), could be landed illegally in federal waters, or may die as a result of post-release mortality. If NMFS did not account for recreational and other mortality of sandbar sharks, efforts to prevent overfishing and rebuild sandbar sharks would be compromised.

*Comment 15:* Why were the effects of Katrina to the Texas recreational industry not analyzed?

*Response:* Consistent with NS1 of the Magnuson-Stevens Act, NMFS is required to implement management measures to rebuild overfished shark species and prevent overfishing. The impacts to the recreational shark fishing industry as a result of Katrina were not specifically analyzed in this rulemaking. Rather, the impacts of the proposed measures that would affect the recreational shark fishing industry in states impacted by Hurricane Katrina were evaluated.

*Comment 16:* NMFS should require that recreational anglers practice only catch and release and report any and all interactions with protected species.

*Response:* Alternative suite 5 proposed prohibiting the possession of sharks in both commercial and recreational fisheries, but it was not the preferred alternative because of the adverse economic impacts that would be incurred by these fisheries. The stock status of many shark species does not warrant a requirement to only catch and release all shark species landed recreationally. The bag limit and minimum size requirements are sufficient to conserve shark stocks, and NMFS does not believe a prohibition on landing all sharks in recreational fisheries is warranted at this time.

*Comment 17:* A typo was made regarding allowable recreational species. On the HMS website copy of the proposed Amendment, the spinner shark was included on the recreational list. On a slide prepared for the public hearings, which was formerly posted on the HMS website, the spinner shark was

not included on the recreational list. NMFS should update the draft document on the HMS website so that the commenting public would have access to the proper information necessary to adequately prepare their comments.

*Response:* The typographical errors in the draft Amendment 2 to the Consolidated HMS FMP have been addressed. An errata sheet describing these errors was posted to the HMS website on November 19, 2007, prior to the end of the public comment period and is available at: [http://www.nmfs.noaa.gov/sfa/hms/sharks/Amendment%202/Errata\\_Sheet\\_for\\_DEIS.pdf](http://www.nmfs.noaa.gov/sfa/hms/sharks/Amendment%202/Errata_Sheet_for_DEIS.pdf).

*Comment 18:* NMFS should consider the cumulative impacts on CHB operators who also fish for sharks in light of measures that have been imposed on this industry for other fisheries such as snapper. Snapper business is down 75-percent and proposed measures for the shark recreational fishery are “the nail in the coffin for CHB”; and, NMFS is violating NEPA by limiting recreational alternatives and through limited cumulative impact analysis by not analyzing impacts such as those caused by red snapper regulations.

*Response:* NEPA requires all Federal agencies to consider and analyze a range of alternatives to achieve the stated objective and analyze cumulative impacts of proposed actions. NMFS considered the cumulative impacts by analyzing permits that participants held in other fisheries and considering the impacts on those other fisheries. Based on public comment, NMFS is modifying the shark species that can be retained by recreational anglers to include all non-ridgeback LCS and tiger sharks. This modification should allow CHB operators to continue to retain blacktip, spinner, finetooth, and bull sharks which had originally been proposed to be prohibited for recreational anglers due to concerns about anglers' ability to positively identify these species.

*Comment 19:* Party charter operators have to submit Vessel Trip Reports (VTRs) for every trip. NMFS should look into those to get a handle on recreational catches.

*Response:* VTR data were considered for the final rule, however, these data showed only four porbeagle sharks landed by party headboats. MRFSS and LPS are the only databases that NMFS has to track recreational landings. However, for some species, like porbeagle sharks, the timing of these programs do not necessarily capture when porbeagle sharks are caught by recreational fishermen in New England.

As such, NMFS is considering ways to improve its recreational landings data collection. NMFS is interested in gathering more shark landings data from tournaments with prize categories for sharks, especially porbeagle sharks.

*Comment 20:* NMFS received numerous comments, including one from the South Carolina Department of Natural Resources, stating that NMFS should increase the retention limit for Atlantic sharpnose per vessel in the for-hire fishery. Recreational fishermen cannot avoid sharpnose sharks and the recent stock assessment declared that they were not overfished or subject to overfishing.

*Response:* Modifying the retention limits for Atlantic sharpnose was not considered in this amendment. Measures concerning Atlantic sharpnose sharks and other small coastal sharks (SCS) will be included in Amendment 3 to the HMS FMP based on recent (2007) stock assessments for SCS (May 7, 2008, 73 FR 25665).

#### 10. SAFE Report and Stock Assessment Frequency

*Comment 1:* NMFS should implement the preferred alternative 9 for SAFE report frequency, which would allow NMFS to publish a SAFE report by the fall of each calendar year.

*Response:* NMFS is implementing alternative 9, which modifies the existing regulations by requiring the publication of a SAFE report in the fall of each year. This should allow NMFS more flexibility to balance other responsibilities throughout the calendar year, as necessary, and will give NMFS the opportunity to include data for the SAFE report that is typically collected at the beginning of each calendar year.

*Comment 2:* Within the annual SAFE report, NMFS needs to correctly identify the overfished and overfishing status of every managed shark species by species, rather than by complex.

*Response:* The SAFE report follows the guidelines specified for NS2 and is used by NMFS to develop and evaluate regulatory adjustments under the framework procedure or the FMP amendment process. Within each SAFE report, NMFS lists the status determination of each stock. If the stock is managed within a species complex, then NMFS would report the status of the complex. For sharks, NMFS does not have the necessary information to conduct separate stock assessments for each species. Therefore, NMFS cannot make species-specific stock status determinations for every species of shark that is commercially harvested. Therefore, those species are managed within a species complex. NMFS is

moving towards more species-specific management as available data allows, as is the case with sandbar sharks, which will be managed separately from the LCS complex based on measures implementing the Final Amendment 2 to the Consolidated HMS FMP.

*Comment 3:* NMFS should implement the preferred alternative 7 for shark stock assessments, which would allow NMFS to conduct shark stock assessments at least once every five years.

*Response:* Because of the time necessary to modify management measures consistent with stock assessments, NMFS is implementing the preferred alternative 7 and will conduct shark stock assessments at least once every five years. This should provide sufficient time for existing or forthcoming management measures to take effect (i.e., a few years) prior to the next stock assessment.

*Comment 4:* NMFS received several comments in favor of the status quo for timing of stock assessments, including: NMFS should consider keeping the status quo for the timing of stock assessment for sharks; we are opposed to having an assessment at least once every five years; five years is too long to wait for an assessment; it is critical that stock assessments be regular and robust; NMFS should implement alternative 6, the status quo for the timing of shark stock assessments, with a mandate of stock assessments no less frequently than every 3 years; and, stock assessments should occur at least every 2 to 3 years without any further delays.

*Response:* Because of the time necessary to modify management measures consistent with stock assessments, NMFS is finalizing measures that increase the amount of time between stock assessments to allow existing or forthcoming measures to be in place and have an effect on the population before the next assessment takes place. In 2003, NMFS adopted the SEDAR process for completing shark stock assessments at the request of industry, environmentalists, and academics. This process increases the time necessary to complete a stock assessment because it entails three workshops where data are reviewed, stock assessment models are run, and results are reviewed by an outside panel. Since this process alone may take over a year to complete, conducting assessments every 2 to 3 years is not practical. Allowing stock assessments to be conducted at least once every five years should allow research suggested by the last assessment to be completed before the next assessment is done, thus providing the necessary data for future

assessments. It should also allow management measures, which need to be in place for several years to have an effect, to begin to achieve management objectives before a new assessment is done. For instance, the last stock assessment, which was completed in 2006, included data through 2004. NMFS is currently developing management measures based on that assessment, and those new management measures would be in place 30 days after publication of this rule. If the next stock assessment is conducted in 2009 (3 years from 2006), and includes data up through 2007 or 2008, the new management measures would not have had time to take effect as they would not have been in place for the time series of data used for a 2009 assessment. Decreasing the frequency to at least once every five years would result in the next assessment occurring no later than 2011, which could consider data up through 2009 and data collected under the new management measures.

*Comment 5:* The Georgia Coastal Resources Division believes that while conducting assessments every 2–3 years is too short for an accurate assessment, conducting stock assessments every five years is also too frequent for the rebuilding timeframes necessary for the concerned species and to evaluate the effects of management.

*Response:* Alternative 7 changes the current process outlined in the 1999 FMP by requiring stock assessments for sharks at least every five years instead of every two to three years. Stock assessments could occur more frequently; however, according to NMFS' policy adequate stock assessments are required at least once every five years. This timeframe ensures that NMFS can incorporate new data, use the best available data, and test the effectiveness of management measures. Waiting more than five years to conduct an assessment could lead to the need for greater changes leading to more uncertainty in the status of the stock and effectiveness of management.

#### 11. Research Fishery/Preferred Alternative

*Comment 1:* NMFS should not finalize the proposed preferred alternative suite 4. The sandbar shark quota should be spread over 40–50 vessels making 1–2 trips annually rather than 5–10 vessels making more trips.

*Response:* The final action strikes a balance between positive ecological impacts that must be achieved to rebuild and stop overfishing on depleted stocks while minimizing the severity of negative economic impacts that could occur as a result of these

measures. NMFS intends to address vital research concerns via the shark research fishery. By allowing a limited number of historical participants to continue harvesting sharks, NMFS ensures that data for stock assessments and life history samples will continue to be collected. The final action also allows a small pool of individuals to continue to collect revenues from sharks as they have in the past. Increasing the number of vessels included in the shark research fishery would simply provide a much smaller benefit for a larger pool of individuals. Furthermore, having fewer vessels involved in the research fishery ensures less variation among vessels and also maintains more consistent sampling protocols. Fewer vessels in the research fishery would also allow each vessel to make more sets targeting sandbar sharks throughout the year and within each region rather than a larger number of vessels only making one or two trips in a particular region/season. The selection process will take place each year in order to maximize the number of potential participants.

*Comment 2:* NMFS received several comments on research fishery vessel selection. These comments included: NMFS should select vessels based on a fisherman's income from the shark industry; NMFS should consider if a fisherman has helped with research in the past and consider whether or not the researchers had a positive experience; NMFS should consider any past violations, and if a vessel is conducive to research (i.e., enough deck space); captains and crew should have an understanding of why the research is being done, an understanding of the costs associated with the research, the ability to fish in multiple regions, and the ability to carry observers; past participation in the observer program and shark fishery should be considered; NMFS should create a point system based on criteria for selection of vessels and if there are more than 5–10 vessels, then a lottery should be used; NMFS should administer the research fishery much like they do the EFP program; the shark research fishery should only include directed shark permit holders; NMFS should increase the number of vessels in the research fishery and decrease the amount of sandbars each vessel may land; observer coverage should still happen within the research fishery; NMFS needs to provide clarification as to how vessels will be selected to participate in the shark research fishery included in the preferred alternative; and who will pick the fishermen for the research fishery?

*Response:* Applications and permits for the shark research fishery will be

administered through the HMS Exempted Fishing Permit program. The HMS Management Division will coordinate with NMFS scientists to determine research objectives. NMFS will publish an annual notice in the **Federal Register** that describes the expected research objectives, number of vessels needed, selection criteria, and the application deadline. Requested information could include, but is not limited to, name and address, permit information, number of expected trips to collect sharks, regions where fishing activities would occur, vessels employed, and gear used. NMFS will review all complete applications and rank vessels according to the ability of the vessel to meet research objectives, fish in the specified regions and seasons, carry a NMFS approved observer, and meet other criteria as published in the **Federal Register** notice. Establishing a point system or a lottery for selection of vessels may be considered as a means of selecting among qualified vessels interested in participating in a shark research fishery. NMFS will include the appropriate types of permit holders in the shark research fishery as determined by the research objectives on an annual basis.

*Comment 3:* NMFS should allow vessels participating in the research fishery and collecting data to make the most of what they catch.

*Response:* Non-prohibited sharks landed in the shark research fishery can be sold by fishermen. NMFS-approved observers onboard vessels in the shark research fishery will be authorized to collect any and all samples from any specimens retained during fishing activities to fulfill research goals.

*Comment 4:* Quota for the research fishery should be equally distributed geographically.

*Response:* NMFS will consider the geographic distribution of vessels selected to participate in the shark research fishery to reflect traditional participation by vessels targeting sharks and to ensure that data are maintained for future stock assessments. Further, equal geographic distribution will allocate economic benefits to all regions affected by measures in the final rule and ensure that samples are collected from sandbar and other species of sharks throughout their geographic range.

*Comment 5:* NMFS should clearly state how the quota for sandbar sharks will be calculated.

*Response:* The sandbar shark quota was determined by the TAC recommended by the sandbar shark stock assessment for the species to rebuild by 2070. The available quota for

commercial shark fishermen participating in the shark research fishery (116.6 mt dw) was determined based on the TAC while considering other sources of sandbar shark mortality in recreational fisheries and dead discards that occur in other fisheries. This quota will be reduced to 87.9 mt dw through the end of 2012. Additional detail on these calculations may be found in Appendices A and C of the Final Amendment 2 to the Consolidated HMS FMP.

*Comment 6:* Is NMFS going to provide flexibility regarding when and where vessels fish?

*Response:* Research vessels will have some flexibility with regard to timing of trips subject to the objectives and needs of the research fishery. Vessels selected for, and fishing under, the auspices of the shark research permit will be required to take a NMFS-approved observer on all trips. Therefore, observer availability may limit timing of individual trips by vessels. Similarly, NMFS intends the quota available for the shark research fishery to last throughout the year so that samples are collected from vessels fishing in all regions and seasons. As such, NMFS may not place observers on all trips that vessel operators of qualified vessels request to ensure that the sandbar research and the non-sandbar LCS research quotas, neither of which have regions, are available throughout the year. The number of available trips targeting sharks will be dependant on retention limits, success of other vessels targeting sharks, available quota, and other considerations.

*Comment 7:* NMFS received several comments on research fishery goals and science, including: NMFS should describe its data and research needs; a research plan needs to be developed; a research plan should be devised first before the vessels/fishermen are selected; and the design of the sandbar-oriented research fishery requires scientific input and oversight in order to fulfill a research mission.

*Response:* The research goals and objectives for the shark research fishery are being developed with NMFS scientists. Research objectives may vary from year-to-year, depending on scientific needs. Several research needs were identified by the peer-reviewers during the LCS stock assessment in 2006 and provide the basis for the shark research fishery goals for 2008, as outlined in the FEIS. Available data on LCS are also presented in the data workshop summary report which is located on the SEDAR website: ([http://www.sefsc.noaa.gov/sedar/Sedar\\_Workshops.jsp](http://www.sefsc.noaa.gov/sedar/Sedar_Workshops.jsp))

*WorkshopNum'11*). Each year, the objectives will be published and made available to the public in conjunction with the **Federal Register** notice that solicits applications from fishermen interested in participating in the shark research fishery. Research topics may include, but are not limited to: target and bycatch rates using circle and J-hooks with unique bait combinations; sandbar age at first maturity and maturity ogive (which is a description of the proportion of the individuals that are mature at a given age); reducing bycatch rates of protected resources and prohibited sharks; and, life history of coastal sharks.

*Comment 8:* NMFS received several comments about which permit holders should be able to participate in the shark research fishery, including: the research fishery should include CHB permit holders and NMFS should not allow incidental permit holders to apply for the research fishery.

*Response:* The research fishery might include any types of HMS permits, including CHB permits, depending on the research objectives for a given year. These objectives, and the types of vessels that will be considered, will be published annually in advance of research activities so that fishermen with the appropriate permits may apply.

Some of the objectives for the research fishery are to continue to collect sandbar shark landings data to ensure consistent time-series data for future stock assessments and to answer specific research questions concerning shark life history and mechanisms to reduce bycatch, among others. Incidental permit holders have contributed to limited landings of sandbar sharks in the past; therefore, some landings data for sandbar sharks from incidental permit holders in the shark research fishery may be warranted.

*Comment 9:* NMFS should not implement a research fishery because it will take quota away from U.S. fishermen.

*Response:* Quota will not be taken away from U.S. fishermen as a result of the shark research fishery; however, a reduced quota consistent with the recommended TAC will be implemented in this final rulemaking. All of the available sandbar shark quota will be harvested in the shark research fishery. Interested U.S. fishermen will have the opportunity to apply for, and participate in, this fishery which will allow fishermen to harvest and sell sandbar sharks.

*Comment 10:* The research fishery should be limited in its first year (maybe 25-percent of the sandbar quota) so

NMFS could figure out how the research fishery process would work. For the rest of the fishery, fishermen could then land some sandbars.

*Response:* There is a limited amount of sandbar shark quota available compared to previous years because NMFS is implementing a TAC and commercial sandbar quota that are consistent with the 2005/2006 sandbar shark stock assessment. Overharvests of sandbar sharks from 2006 and 2007 must also be accounted for, resulting in an adjusted commercial sandbar quota of 87.9 mt dw between 2008–2012. Allocating a small portion of this reduced quota to fishermen outside the shark research fishery would reduce the quota available for the research fishery, limiting NMFS' ability to achieve research objectives.

*Comment 11:* There is an inconsistency in alternative suite 4 regarding the number of vessels that would be allowed to participate in the research fishery. In Chapter 2, it was stated that “[NMFS] is not certain regarding the number of vessels that may participate in the shark research fishery” (pg 2-8), yet in Chapter 4 (pg 4-77), it states “NMFS scientists and managers would select a few vessels (i.e., 5-10) each year to conduct the prescribed research.”

*Response:* NMFS is not certain of the exact number of vessels that would be selected for the research fishery. The number of vessels selected depends on research objectives, the number of vessels that qualify to participate in the shark research fishery, and quota available. Inclusion of five to ten vessels in the draft documents associated with the proposed rule provided the public with an estimate of how many vessels may be needed, given historical retention limits and proposed commercial quotas, for the shark research fishery.

*Comment 12:* The Georgia Department of Coastal Resources supports alternative suite 4 but thinks that unclassified sharks should be grouped as ridgeback and non-ridgeback.

*Response:* NMFS proposed counting unclassified sharks as sandbar sharks in the draft Amendment 2 to the Consolidated HMS FMP to provide an incentive for shark dealers to properly identify the sharks they purchase to the species level. Since the commercial quota for sandbar sharks is the lowest, NMFS had proposed an approach that would ensure that overfishing of sandbar sharks did not occur by providing an incentive for shark dealers to properly identify what they purchase and not list sharks as unclassified. However, NMFS is concerned that too

many unclassified sharks being counted as sandbar sharks may fill the sandbar quota and close the shark research fishery prematurely. NMFS will use observer reports from outside the research fishery to determine species/complex (i.e., non-sandbar LCS, SCS, pelagic sharks, sandbar sharks) from which the unclassified sharks should be deducted. This should result in unclassified sharks being counted from a more appropriate assemblage than assuming all unclassified sharks are sandbar sharks and may result in the shark research fishery staying open for a longer period of time.

*Comment 13:* NMFS should implement alternative suite 4 because it will greatly improve data collection prior to the next SEDAR for LCS. It will help re-analyze the life history of sandbar sharks, especially.

*Response:* NMFS prefers alternative suite 4 because it implements a shark research fishery that should provide a limited number of fishermen with the economic incentive to collect valuable scientific data on sharks for NMFS. NMFS will attain information from this research that will help future stock assessments fill in some of the data gaps that previous stock assessments have identified.

*Comment 14:* Alternative suite 4 allows fishing to continue for shark species without having adequate information to responsibly do so. NMFS should limit shark fishing activities until the status of remaining (all sharks but sandbar, dusky, porbeagle) sharks has been determined.

*Response:* NMFS is implementing measures that should reduce fishing mortality of sharks significantly while collecting data for future stock assessments. Without this data, NMFS' ability to conduct future stock assessments would be hampered. Currently, NMFS and other collaborating fishery management entities have completed stock assessments for all the shark species that have ample data available.

*Comment 15:* NMFS should not implement a lethal sandbar research fishery. NMFS should implement a tag and release research fishery.

*Response:* It is not possible to gather all the necessary biological samples, including reproductive organs and vertebrae, without some shark mortality. Commercial fishermen also need some incentive to participate in the shark research fishery as no other compensation would be provided. Therefore, the shark research fishery will allow data collection and the sale of animals collected to reduce dead discards and waste.

*Comment 16:* NMFS should address bycatch in alternative suite 4. This alternative suite is not adequate to ensure the recovery of depleted sandbar and dusky sharks.

*Response:* This final action should ensure that fishing effort targeting sandbar sharks and non-sandbar LCS is reduced, consistent with stock assessment recommendations. This reduction in fishing effort should result in reductions in bycatch and target catch. Landings of sandbar sharks are expected to decrease by 80-percent. Discards of dusky sharks are expected to decrease by 74-percent. Modifications to retention limits, quotas, and authorized species in commercial and recreational fisheries are expected to decrease bycatch and landings of target species to a level that is consistent with recommendations of the 2005/2006 LCS stock assessment and provides a mechanism for rebuilding of sandbar and dusky sharks.

*Comment 17:* Alternative suite 4 could shift effort to SCS and pelagics.

*Response:* Fishing effort directed at SCS and pelagics may increase; however, these quotas are traditionally not fully utilized and are not being modified at this time with the exception of porbeagle sharks. The commercial quota for porbeagle sharks is being established, based on historical commercial landings, to prevent fishing effort from increasing while the stock is being rebuilt. Should fishing effort increase to the extent that the best available science indicates overfishing is occurring or stocks are overfished or approaching an overfished condition, NMFS will take additional action.

*Comment 18:* The management measures in alternative suite 4 will not adequately prevent the quota overharvests that have historically occurred within this fishery.

*Response:* Maintaining 100-percent observer coverage in the shark research fishery should enable NMFS to monitor landings in the shark research fishery in near real-time, reducing the likelihood of overharvests. Reducing retention limits outside the research fishery should reduce the number of non-sandbar LCS individual vessels may land each trip, which should prevent directed permit holders from targeting non-sandbar LCS. Instead, directed permit holders are anticipated to incidentally land non-sandbar LCS while they target other species. These measures, coupled with the fact that sandbar shark retention will be prohibited outside the research fishery, may reduce the number of overall trips landing sharks. Lastly, ensuring that shark dealer reports are received by

NMFS within ten days of the 15<sup>th</sup> or 1<sup>st</sup> of every month should provide NMFS with the ability to provide more frequent landings updates and close the fishery if necessary to avoid overharvests.

## 12. Comments on Other Alternative Suites and Management Measures

*Comment 1:* NMFS received several comments on the status quo alternative (alternative suite 1), including: NMFS should maintain the status quo; and NMFS should implement different measures because the status quo clearly is not working and should be abandoned.

*Response:* NMFS chose not to select the status quo alternative as the preferred alternative because it does not end overfishing or implement rebuilding plans for overfished stocks as required under the Magnuson-Stevens Act. NMFS is implementing alternative suite 4, with minor modifications based on further analysis and public comment, because it implements quotas and retention limits necessary to rebuild and end overfishing of several shark species. The final action maximizes scientific data collection by implementing a limited research fishery for sandbar sharks with 100-percent observer coverage. It also mitigates some of the significant economic impacts that are necessary and expected under all alternative suites to reduce fishing mortality as prescribed by recent stock assessments. Thus, the final action strikes a balance between positive ecological impacts that must be achieved to rebuild and end overfishing of depleted stocks while minimizing the negative economic impacts that could occur as a result of these measures.

*Comment 2:* NMFS received several comments on alternative suite 2, including: NMFS should not implement alternative suite 2 because it does not allow ILAP (Incidental Limited Access Permit) holders to land sandbar sharks; NMFS should implement alternative suite 2 with the caveats that porbeagle sharks be authorized for recreational fishermen and sandbars should be allowed on PLL gear; alternative suite 2 is more protective of sandbar sharks than preferred Alternative 4.

*Response:* NMFS did not prefer alternative suite 2 because incidental permit holders would not be able to land any sharks, which could result in excessive dead discards. There would also be an increased reporting burden for shark dealers, which could result in negative economic impacts for shark dealers.

Under alternative suite 2, porbeagle sharks would be added to the prohibited

list for commercial and recreational fishing because porbeagle sharks were determined to be overfished based on the 2005 Canadian stock assessment. In addition, porbeagle sharks often look similar to other prohibited species (i.e., white sharks). Therefore, placing porbeagle sharks on the prohibited species list would prohibit landings and help rebuild this overfished species. It may also stop commercial and recreational landings of other look-alike shark species, such as white sharks, which are also prohibited.

Alternative suite 2 is not more protective of sandbar sharks than alternative suite 4 (the final action). In fact, it could result in more sandbar shark discards compared to alternative suite 4 (43.2 mt dw compared to 13.1 mt dw). In addition, allowing directed shark permit holders to fish for sandbar sharks with PLL gear, especially in the mid-Atlantic closed area, could increase discards and overall mortality of dusky sharks. Thus, sandbar sharks would be prohibited on PLL gear under alternative suite 2 to offer dusky sharks more protection. NMFS estimated that prohibiting the retention of sandbar sharks on PLL gear under alternative suite 2 could reduce dusky discards to 8.6 mt dw per year.

This final action also reduces quotas and retention limits to rebuild depleted shark stocks and end overfishing of several shark species, while minimizing regulatory discards. In addition, the final action should allow for the collection of fishery dependent data for future stock assessments and biological samples for shark research, while also allowing a few shark fishermen to continue to fish and generate revenues from shark landings as they have in the past.

*Comment 3:* NMFS received several comments regarding alternative suite 3, including: NMFS should support a year-round incidental fishery where all participants could keep a few sharks (including sandbars) to avoid dead discards; NMFS should eliminate the directed shark permit; if NMFS allowed a bycatch industry only, prices for meat might increase because there would be a consistent quantity of sharks year-round; alternative suite 3 is best for retention limits; NMFS should support a revised alternative suite 3 with current reporting requirements and no restrictions for recreational fishermen, except the current species limitations.

*Response:* Positive ecological impacts would likely be more pronounced for some species under the final action (preferred alternative suite 4) compared to alternative suite 3 because discards should be lower under alternative suite



*Comment 16:* NMFS should address bycatch in alternative suite 4. This alternative suite is not adequate to ensure the recovery of depleted sandbar and dusky sharks.

*Response:* This final action should ensure that fishing effort targeting sandbar sharks and non-sandbar LCS is reduced, consistent with stock assessment recommendations. This reduction in fishing effort should result in reductions in bycatch and target catch. Landings of sandbar sharks are expected to decrease by 80-percent. Discards of dusky sharks are expected to decrease by 74-percent. Modifications to retention limits, quotas, and authorized species in commercial and recreational fisheries are expected to decrease bycatch and landings of target species to a level that is consistent with recommendations of the 2005/2006 LCS stock assessment and provides a mechanism for rebuilding of sandbar and dusky sharks.

*Comment 17:* Alternative suite 4 could shift effort to SCS and pelagics.

*Response:* Fishing effort directed at SCS and pelagics may increase; however, these quotas are traditionally not fully utilized and are not being modified at this time with the exception of porbeagle sharks. The commercial quota for porbeagle sharks is being established, based on historical commercial landings, to prevent fishing effort from increasing while the stock is being rebuilt. Should fishing effort increase to the extent that the best available science indicates overfishing is occurring or stocks are overfished or approaching an overfished condition, NMFS will take additional action.

*Comment 18:* The management measures in alternative suite 4 will not adequately prevent the quota overharvests that have historically occurred within this fishery.

*Response:* Maintaining 100-percent observer coverage in the shark research fishery should enable NMFS to monitor landings in the shark research fishery in near real-time, reducing the likelihood of overharvests. Reducing retention limits outside the research fishery should reduce the number of non-sandbar LCS individual vessels may land each trip, which should prevent directed permit holders from targeting non-sandbar LCS. Instead, directed permit holders are anticipated to incidentally land non-sandbar LCS while they target other species. These measures, coupled with the fact that sandbar shark retention will be prohibited outside the research fishery, may reduce the number of overall trips landing sharks. Lastly, ensuring that shark dealer reports are received by

NMFS within ten days of the 15<sup>th</sup> or 1<sup>st</sup> of every month should provide NMFS with the ability to provide more frequent landings updates and close the fishery if necessary to avoid overharvests.

## 12. Comments on Other Alternative Suites and Management Measures

*Comment 1:* NMFS received several comments on the status quo alternative (alternative suite 1), including: NMFS should maintain the status quo; and NMFS should implement different measures because the status quo clearly is not working and should be abandoned.

*Response:* NMFS chose not to select the status quo alternative as the preferred alternative because it does not end overfishing or implement rebuilding plans for overfished stocks as required under the Magnuson-Stevens Act. NMFS is implementing alternative suite 4, with minor modifications based on further analysis and public comment, because it implements quotas and retention limits necessary to rebuild and end overfishing of several shark species. The final action maximizes scientific data collection by implementing a limited research fishery for sandbar sharks with 100-percent observer coverage. It also mitigates some of the significant economic impacts that are necessary and expected under all alternative suites to reduce fishing mortality as prescribed by recent stock assessments. Thus, the final action strikes a balance between positive ecological impacts that must be achieved to rebuild and end overfishing of depleted stocks while minimizing the negative economic impacts that could occur as a result of these measures.

*Comment 2:* NMFS received several comments on alternative suite 2, including: NMFS should not implement alternative suite 2 because it does not allow ILAP (Incidental Limited Access Permit) holders to land sandbar sharks; NMFS should implement alternative suite 2 with the caveats that porbeagle sharks be authorized for recreational fishermen and sandbars should be allowed on PLL gear; alternative suite 2 is more protective of sandbar sharks than preferred Alternative 4.

*Response:* NMFS did not prefer alternative suite 2 because incidental permit holders would not be able to land any sharks, which could result in excessive dead discards. There would also be an increased reporting burden for shark dealers, which could result in negative economic impacts for shark dealers.

Under alternative suite 2, porbeagle sharks would be added to the prohibited

list for commercial and recreational fishing because porbeagle sharks were determined to be overfished based on the 2005 Canadian stock assessment. In addition, porbeagle sharks often look similar to other prohibited species (i.e., white sharks). Therefore, placing porbeagle sharks on the prohibited species list would prohibit landings and help rebuild this overfished species. It may also stop commercial and recreational landings of other look-alike shark species, such as white sharks, which are also prohibited.

Alternative suite 2 is not more protective of sandbar sharks than alternative suite 4 (the final action). In fact, it could result in more sandbar shark discards compared to alternative suite 4 (43.2 mt dw compared to 13.1 mt dw). In addition, allowing directed shark permit holders to fish for sandbar sharks with PLL gear, especially in the mid-Atlantic closed area, could increase discards and overall mortality of dusky sharks. Thus, sandbar sharks would be prohibited on PLL gear under alternative suite 2 to offer dusky sharks more protection. NMFS estimated that prohibiting the retention of sandbar sharks on PLL gear under alternative suite 2 could reduce dusky discards to 8.6 mt dw per year.

This final action also reduces quotas and retention limits to rebuild depleted shark stocks and end overfishing of several shark species, while minimizing regulatory discards. In addition, the final action should allow for the collection of fishery dependent data for future stock assessments and biological samples for shark research, while also allowing a few shark fishermen to continue to fish and generate revenues from shark landings as they have in the past.

*Comment 3:* NMFS received several comments regarding alternative suite 3, including: NMFS should support a year-round incidental fishery where all participants could keep a few sharks (including sandbars) to avoid dead discards; NMFS should eliminate the directed shark permit; if NMFS allowed a bycatch industry only, prices for meat might increase because there would be a consistent quantity of sharks year-round; alternative suite 3 is best for retention limits; NMFS should support a revised alternative suite 3 with current reporting requirements and no restrictions for recreational fishermen, except the current species limitations.

*Response:* Positive ecological impacts would likely be more pronounced for some species under the final action (preferred alternative suite 4) compared to alternative suite 3 because discards should be lower under alternative suite

*Response:* NMFS does not believe that closing the entire shark fishery, or establishing a catch and release only fishery, is warranted at this time. In implementing the final action, NMFS is following the recommendations of these latest stock assessments and taking significant steps in this amendment to rebuild overfished sharks, reduce fishing mortality, and allow shark species to rebuild while minimizing economic impacts and achieving optimum yield. While alternative suite 5 would have the most positive ecological impacts for sharks, protected resources, and essential fish habitat (EFH) of the alternative suites considered in this document, closing the Atlantic shark fishery would also incur unnecessary economic impacts on U.S. shark fishermen, shark dealers, shark tournament operators, and others involved in supporting industries. There are numerous species of shark that are not overfished or experiencing overfishing, such as the Gulf of Mexico blacktip sharks, and, therefore, a full closure of the shark fishery is not warranted at this time. Furthermore, by closing the shark fishery, NMFS would lose a valuable source of fishery dependent data (through logbooks and the shark BLL observer program) and biological samples that are essential for future shark stock assessments. Other alternative suites considered by NMFS would strike a balance between ending overfishing and allowing overfished shark stocks to rebuild and allowing some retention of sharks to meet the economic needs of the shark fishing community.

*Comment 7:* NMFS should reconsider a ban on BLL gear to reduce landings/mortality of sandbar and dusky sharks. The argument that more participants will transfer fishing effort to the gillnet fisheries for sharks is unconvincing.

*Response:* BLL gear is the primary gear used to harvest sharks by shark permit holders and to target non-HMS (i.e., snapper-grouper, reef fish, and tilefish). Many shark permit holders also maintain permits in these other non-HMS fisheries. Banning retention of sharks caught with BLL gear to reduce landings and mortality of sandbar and dusky sharks could result in regulatory discards of sharks because vessels deploying BLL gear in these other fisheries would have to discard all incidentally caught sharks in the pursuit of other non-HMS species with BLL gear. In addition, by banning BLL gear for sharks, sharks could only be harvested by gillnet gear, rod and reel, or PLL gear. Given concerns of protected species interactions in both the PLL and gillnet fisheries, NMFS concluded that

it would not be appropriate to redistribute shark BLL effort into these fisheries. Therefore, NMFS is not banning BLL gear for sharks at this time.

*Comment 8:* NMFS should analyze an alternative suite that banned commercial shark fisheries without restricting the recreational shark fishery to lessen economic impact, overall.

*Response:* NMFS did not analyze a closure of only the commercial shark fishery, while allowing a recreational shark fishery to continue, due to concerns over equity to different sectors. National Standard 4 of the MSA requires that allocation of fishery resources be fair and equitable to all fishermen. Since shark species that are overfished and experiencing overfishing are caught both in the commercial and recreational fisheries, NMFS considered management measures that applied to both sectors that would help rebuild shark stocks and end overfishing. Additionally, since commercial fishermen may sell shark products where recreational fishermen cannot, closing the commercial shark sector could have the largest economic impact. There are also numerous species of shark that are not overfished or experiencing overfishing, and therefore do not warrant a full closure of the commercial or recreational Atlantic shark fishery at this time. Furthermore, by closing the shark fishery, NMFS would lose a valuable source of fishery dependent data (through logbooks and the shark observer programs) that would limit future shark stock assessments. Therefore, NMFS is implementing alternative suite 4.

*Comment 9:* NMFS should not establish a small research fishery because it would benefit few and disadvantage most of the shark fishermen. Everyone should get a chance at the quota, either through ITQs, or by having NMFS open up the fishery on January 1 every year and allowing all fishermen to catch sharks until the quota has been filled.

*Response:* NMFS is implementing the final action to allow for the collection of scientific data with the sandbar shark quota while at the same time allowing a few fishermen to have some economic benefit from the sale of sharks and shark products. Spreading the sandbar shark quota among all fishermen with shark permits would not foster sandbar shark research. While NMFS agrees that ITQs may be beneficial to fishermen, it would take NMFS several years to implement an ITQ system. NMFS is required to end overfishing and implement rebuilding plans for depleted shark stocks under the strict timeframe specified in the Magnuson-Stevens Act. Due to the

complexities and time needed to develop and implement ITQs, the time period mandated by the Magnuson-Stevens Act does not allow sufficient time to establish an IFQ or LAPP for sharks. However, NMFS may consider developing an IFQ or LAPP for sharks, as well as other HMS, in the future.

*Comment 10:* The Georgia Coastal Resources Division requests that NMFS include an alternative that would eliminate gillnets because of their large bycatch.

*Response:* In the past, shark gillnet fishermen have had 100-percent observer coverage during the Atlantic Right Whale calving season and approximately 30-percent observer coverage during the rest of the year; with observers documenting all bycatch on observed trips. Based on this observer data, compared to other gear types, such as PLL gear, gillnet gear has relatively low bycatch, with finfish bycatch ranging from 1.3 to 13.3-percent and observed sea turtle and marine mammal bycatch of less than 0.1-percent. Given the reduction in trip limits as a result of this amendment, and the four to six vessels that currently use strike or drift gillnet gear for sharks, NMFS does not believe there would be a significant increase in shark gillnet fishing pressure in the future and, therefore, NMFS does not feel it is appropriate to eliminate gillnets as an authorized gear at this time.

*Comment 11:* None of the suites completely represent the interests of the fishery.

*Response:* The alternative suites represent a range of management measures derived from scoping and public comment that could be considered based on stock assessments. NMFS assessed the impacts of the alternative suites, reviewed all public comments, and utilized the best available data to make a final analysis. NMFS is implementing alternative suite 4 because it implements quotas and retention limits necessary to rebuild and stop overfishing of several shark species. Alternative suite 4 maximizes scientific data collection by implementing a limited research fishery for sandbar sharks with 100-percent observer coverage. It also mitigates some of the significant economic impacts that are necessary and expected under all alternative suites to reduce fishing mortality as prescribed by recent stock assessments. Ultimately, the final action strikes a balance between positive ecological impacts that must be achieved to rebuild and stop overfishing of depleted stocks while minimizing the negative economic impacts that could occur as a result of these measures.

*Comment 12:* We are concerned about wasteful discards under the proposed alternatives. NMFS should encourage responsible and targeted fishing by providing incentives for fishermen who can fish without discards or minimal discards.

*Response:* NMFS believes that the reduced trip limits (which is approximately one quarter of the current trip limit for directed fishermen under the status quo) and the prohibition on retention of sandbar sharks outside the research fishery will likely result in directed fishermen no longer targeting non-sandbar LCS. Currently, most of the discards of dusky, sandbar, and other shark species come from the directed shark fishery. The only directed shark fishing that could occur under the final action would be within the research fishery. Thus, under the final action where most fishermen would target other species and only incidentally catch non-sandbar LCS, NMFS does not anticipate excessive shark discards. For instance, based on shark BLL observer program data, on average, non-shark BLL trips caught one sandbar shark per trip and 12 non-sandbar LCS. The retention limits of 33 non-sandbar LCS per trip for directed permit holders could allow fishermen to keep incidentally caught non-sandbar LCS as they target other species. In addition, these non-shark trips typically have much shorter soak times (2–3 hours) compared to shark trips (12–14 hour soak times). Thus, it is estimated that most sandbar bycatch could be released alive since they would be released from longline gear in a relatively short period of time.

### 13. Science

*Comment 1:* NMFS received several comments regarding the rebuilding timeframe for sandbar sharks stating that NMFS should take a more precautionary approach rather than the maximum rebuilding timeframe of 70 years for sandbar sharks and that NMFS should consider a total ban on sandbar shark landings in all fisheries and an accelerated rebuilding timeframe of 38 years.

*Response:* The 2005/2006 LCS stock assessment discussed three rebuilding scenarios, including: rebuilding timeframe under no fishing; a TAC corresponding to a 50-percent probability of rebuilding by 2070; and a TAC corresponding to a 70-percent probability of rebuilding by 2070. Under no fishing, the stock assessment estimated that sandbar sharks would rebuild in 38 years. Under the NS 1 guidelines, if a species requires more than 10 years to rebuild, even in the

absence of fishing mortality, then the specified time period for rebuilding may be adjusted upward by one mean generation time. Thus, NMFS added a generation time (28 years) to the target year for rebuilding sandbar sharks. The target year is the number of years it would take to rebuild the species in the absence of fishing, or 38 years for sandbar sharks. NMFS determined that the rebuilding time that would be as short as possible for sandbar sharks would be 66 years, taking into account the status and biology of the species and severe economic consequences on fishing communities. This would allow sandbar sharks to rebuild by 2070, given a rebuilding start year of 2004, the last year of the time series of data used in the 2005/2006 sandbar shark stock assessment. Since sharks are caught in multiple fisheries, to meet the rebuilding timeframe under a no fishing scenario, NMFS would have to implement restrictions in multiple fisheries to eliminate mortality, such as entirely shutting down multiple fisheries to prevent bycatch. If NMFS were to shut down the shark fishery completely, such action would likely have severe economic impacts on the fishing community and it would likely result in difficulties for Council-managed and Commission-managed fisheries, which often catch sharks as bycatch. In addition, prohibiting all fishing for sharks would impact NMFS' ability to collect data for future management.

The assessment assumed that fishing mortality from 2005 to 2007 would be maintained at levels similar to 2004 (the last year of data used in the stock assessment was from 2004) and that there would be a constant TAC between 2008 and 2070. Based in part on these assumptions, the assessment estimated that sandbars would have a 70-percent probability of rebuilding by 2070 with a TAC of 220 mt ww (158 mt dw)/year and a 50-percent probability of rebuilding by 2070 with a TAC of 240 mt ww (172 mt dw)/year. As described previously, NMFS is using the 70-percent probability of rebuilding to ensure that the intended results of a management action are actually realized given the life history traits of sandbar sharks.

*Comment 2:* NMFS received a comment stating disagreement with the science that suggests there is a decline in sandbar sharks because the industry went over their quota by 300-percent in two weeks and therefore shark populations are healthy and abundant.

*Response:* NMFS used the best available science and a rigorous SEDAR assessment process to make the

determination that sandbar sharks are overfished. Recent landings and higher catch rates do not necessarily indicate errors in the stock assessment, or that the sandbar shark populations have recovered. Catch rates alone do not tell the whole story, nor do percentages because they may be a reflection of lower quotas as described in further detail below. Most catch rate series show stable or unclear trends in recent years, but large declines occurred in the late 1970s and 1980s. There has been a commercial quota imposed on the shark fishery since 1993; stable landings in the last decade most likely reflect the effect of a commercial quota, not necessarily a stable population. For instance, commercial catch declined from 162,000 individuals in 1989 to 72,600 individuals in 1993 prior to implementation of the commercial quota. A 300-percent overharvest of LCS does not necessarily mean that more sharks were being caught or that it represents a healthy shark population; rather, it may be the result of significantly reduced LCS quotas due to overharvests in recent years and fishermen continuing to fish at effort levels similar to those set in 2003 and 2004.

*Comment 3:* NMFS received a comment stating that fishermen/dealers do not properly identify what they are catching, which may have impacted the results of the stock assessment.

*Response:* Since 1993, species-specific reporting has been required for shark fishermen and shark dealers. However, some fishermen and dealers still report sharks in more general terms as "sharks" or "large coastal sharks". These unclassified sharks have been problematic for shark stock assessments. Fisheries observers are trained in species-specific identification and report the correct species-level data. Thus, NMFS uses observer data to determine species composition of unclassified sharks for stock assessment purposes. In addition, recognizing that the accuracy of stock assessments and management can be improved with correct species identification, NMFS established mandatory shark identification workshops for shark dealers in regulations implementing the Consolidated HMS FMP. The objective of these workshops is to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form, and to increase the accuracy of species-specific dealer reported information, quota monitoring, and the data used in stock assessments. These workshops train shark dealers to properly identify Atlantic shark carcasses. NMFS is also developing an

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*Comment 3:* NMFS received a comment stating that fishermen/dealers do not properly identify what they are catching, which may have impacted the results of the stock assessment.

*Response:* Since 1993, species-specific reporting has been required for shark fishermen and shark dealers. However, some fishermen and dealers still report sharks in more general terms as "sharks" or "large coastal sharks". These unclassified sharks have been problematic for shark stock assessments. Fisheries observers are trained in species-specific identification and report the correct species-level data. Thus, NMFS uses observer data to determine species composition of unclassified sharks for stock assessment purposes. In addition, recognizing that the accuracy of stock assessments and management can be improved with correct species identification, NMFS established mandatory shark identification workshops for shark dealers in regulations implementing the Consolidated HMS FMP. The objective of these workshops is to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form, and to increase the accuracy of species-specific dealer reported information, quota monitoring, and the data used in stock assessments. These workshops train shark dealers to properly identify Atlantic shark carcasses. NMFS is also developing an

have included Mexican data of shark catches in the 2005/2006 LCS assessment.

*Response:* The 2005/2006 LCS complex, blacktip, and sandbar shark assessments did include detailed estimates of Mexican catches of blacktip and sandbar shark for the period of 1962–2000. Species composition in weight for different sharks taken in Mexican waters was estimated from the data given in several Mexican studies. These were then used to estimate the total weight and numbers caught of each species in each state. In addition, annual estimates from 2000–2004 of illegal catches of LCS from Mexican fishing vessels fishing in the U.S. EEZ were also included in the 2005/2006 LCS stock assessments.

*Comment 9:* NMFS received a comment stating that NMFS does not need to implement an amendment to the Consolidated HMS FMP until July 12, 2009.

*Response:* The mandate to rebuild overfished stocks is in section 304(e) of the Magnuson-Stevens Act. The Magnuson-Stevens Act states that for stocks identified as overfished or having overfishing occurring, the Secretary of Commerce or the relevant Council, as appropriate, shall prepare a fishery management plan, plan amendment, or proposed regulations for the fishery to end overfishing in the fishery and rebuild affected stocks within one year of that determination. NMFS satisfied that timing provision: sandbar sharks and dusky sharks were determined to be overfished with overfishing occurring on November 7, 2006 (71 FR 65086), and NMFS published the draft Amendment 2 to the Consolidated HMS FMP on July 27, 2007 (72 FR 41325). NMFS notes that the 2006 Magnuson-Stevens Fishery Conservation and Management Reauthorization Act amended section 304(e) to include a two-year timing provision for preparation and implementation of actions, and the new management measures contained in 2006 Magnuson-Stevens Fishery Conservation and Management Reauthorization Act will be effective July 12, 2009.

*Comment 10:* NMFS received several comments regarding conflict of interest, including, 1) there was a conflict of interest at the LCS assessment workshop and review workshop; 2) several reviewers were biased against the industry; 3) the stock assessment is fixed to give a particular outcome based on pressures by conservationists, and; 4) there are conflicts of interest between NMFS employees and the American Elasmobranch Society which should invalidate all studies and assessments.

*Response:* NMFS does not believe that there was any conflict of interest on the part of participants or reviewers in the stock assessment process. The third workshop in the SEDAR process is the review workshop during which a panel of independent experts reviews the input data, assessment methods, and assessment products. This workshop is open to the public. The review workshop panel consists of a chair and two reviewers appointed by the CIE, an independent organization that provides independent, expert reviews of stock assessments and related work. The individuals appointed to the review panel can have no affiliation with any of the affected parties to the assessment, including government, industry, or advocacy groups. The review workshop chair is appointed by the CIE. Two additional reviewers, selected by the Shark SEDAR Coordinator for their expertise in shark stock assessments, were also included on the LCS shark complex review panel. The panel concluded that the data used in the analyses, the assessment approach, and overall conclusions of the assessment were valid. The panel provided no indication that there were any conflicts of interest during the assessment process.

The American Elasmobranch Society (AES) is a non-profit organization that seeks to advance the scientific study of living and fossil sharks, skates, rays, and chimaeras, and the promotion of education, conservation, and wise utilization of natural resources. The Society holds annual meetings and presents research reports of interest to students of elasmobranch biology. Those meetings are held in conjunction with annual meetings of the American Society of Ichthyologists and Herpetologists each year at rotating North American venues. Membership in the AES is open to any person who has an interest in the object of AES. Members of AES include, but are not limited to, representatives from state and federal governmental and non-governmental organizations, and academic institutions. NMFS employees are not restricted from participating in professional societies and, to the extent that participation aids in the collaboration, communication, and peer-reviews in the scientific endeavors of NOAA's mission, employees are encouraged to participate. While participating, employees must differentiate between when they are providing their own personal opinion or when they are acting as a representative of NOAA. Therefore, participation of NMFS employees in AES activities does

not necessarily constitute a conflict of interest. In this case, there is no evidence from which NMFS can conclude that a conflict of interest occurred.

*Comment 11:* NMFS should assess the eleven prohibited LCS species individually and in a public forum and the shark stock assessments should break out all sharks by species, especially bull sharks, scalloped hammerhead sharks, and tiger sharks.

*Response:* NMFS continues to collect species-specific data in support of species-specific stock assessments. To date, NMFS has conducted individual stock assessments for dusky, sandbar, blacktip, Atlantic sharpnose, finetooth, blacknose, and bonnethead sharks. As additional biological and fishery-related data become available, NMFS will conduct other species-specific stock assessments.

*Comment 12:* NMFS possessed certain species-specific knowledge regarding blacktip sharks that it failed to produce for the assessment.

*Response:* NMFS has included all the available data that were presented at the data workshop and has not withheld or failed to produce relevant datasets. NMFS held a data workshop for the 2005/2006 LCS stock assessment that was open to the public and requested that participants, including industry and environmental representatives, submit any relevant data or analysis in the form of working documents. During the assessment workshop, the assessment scientists determined the adequacy and appropriateness of the submitted data to be included in each assessment.

*Comment 13:* Why did the 2005/2006 LCS stock assessment not assess sandbars as two separate populations, one in the Gulf of Mexico and one in the Atlantic similar to what was done for blacktip sharks?

*Response:* During the data workshop portion of the LCS stock assessment, the life history working group looked at multiple studies and data sources to summarize life history information such as stock definition, age, growth size at maturity, and mortality for sandbar and blacktip sharks that was then used in the stock assessments for each species. For sandbar sharks, after considering the available data, the working group decided that the stock definition should be the Western North Atlantic from southern New England to the Gulf of Mexico. Tagging studies suggest that one stock unit exists from Cape Cod south down the U.S. Atlantic coast and into the Gulf of Mexico, extending around the U.S. and Mexican portions of the Gulf of Mexico to the northern

Yucatan peninsula. Genetic studies conducted on specimens from Virginia waters and the Gulf of Mexico further support the existence of a single stock that utilizes the area of Cape Cod to the northern Yucatan peninsula. For blacktip sharks, conventional tagging evidence suggests little exchange between the U.S. Atlantic Ocean and Gulf of Mexico. Genetic heterogeneity and female philopatry also demonstrates multiple genetic reproductive stocks among blacktip sharks in the Gulf of Mexico and South Atlantic Bight. Therefore, blacktip sharks were divided into two stocks: an Atlantic stock defined as extending from Delaware to the Straits of Florida, and a Gulf of Mexico stock designated as extending from the Florida Keys throughout the Gulf of Mexico.

*Comment 14:* NMFS received a comment asking who the peer reviewers were for the 2006 dusky assessment.

*Response:* In order to preserve the integrity of the independent review process of stock assessments, NMFS does not provide the names of the peer reviewers, including those used for the dusky shark assessment.

*Comment 15:* NMFS received several comments regarding the continuation of shark data collection once Amendment 2 is implemented, asking how NMFS would conduct stock assessments with no data from fishermen, and stating that NMFS should obtain more data from the fishermen by placing scientists on fishing vessels.

*Response:* This final action will establish a small research fishery to harvest the entire commercial sandbar shark quota. Vessels operating within the shark research fishery can also retain non-sandbar LCS, SCS and pelagic sharks. These vessels will also have 100-percent observer coverage. Vessels operating outside of the shark research fishery will only be able to retain non-sandbar LCS, SCS, and pelagic sharks. The vessels outside the shark research fishery will continue to be selected for observer coverage. Observers provide baseline characterization information, by region, on catch rates, species composition, catch disposition, relative abundance, and size composition within species for the large coastal and small coastal shark BLL fisheries. NMFS will use observer data as well as logbook and shark dealer data and fisheries independent data to conduct stock assessments in the future.

*Comment 16:* NMFS received a comment supporting stock assessments that occur in the United States and not those that occur in other countries.

*Response:* To date, the United States has not conducted a stock assessment

on porbeagle sharks. NMFS has reviewed the Canadian stock assessment and found that it made full use of all fishery and biological information available and therefore deems it to be the best available science and appropriate to use for U.S. domestic management purposes. Canada has conducted stock assessments on porbeagle sharks in 1999, 2001, 2003, and 2005. Reduced Canadian porbeagle quotas in 2002 brought the 2004 exploitation rate to a sustainable level. According to the 2005 recovery assessment report conducted by Canada, the North Atlantic porbeagle stock has a 70-percent probability of recovery in approximately 100 years if fishing mortality is less than or equal to 0.04. The Canadian assessment indicates that porbeagle sharks are overfished ( $SSN_{2004}/SSN_{MSY} = 0.15 - 0.32$ ;  $SSN$  is spawning stock number and used as a proxy for biomass). However, the Canadian assessment indicates that overfishing is not occurring ( $F_{2004}/F_{MSY} = 0.83$ ). Based on these results, NMFS determined that porbeagle sharks are overfished, but that overfishing is not occurring (71 FR 65086).

*Comment 17:* NMFS received a comment asking if shark migration patterns have been studied along with sea surface temperatures.

*Response:* Sea surface temperature is an important physical data parameter that is collected during investigations of shark migration patterns. The data workshop for the 2005/2006 LCS stock assessment included several studies investigating the correlation of sea surface temperature and shark migration patterns. A summary of these studies and reference citations can be found in the SEDAR 11 final stock assessment report available on the HMS website at [http://www.nmfs.noaa.gov/sfa/hms/hmsdocument\\_files/sharks.htm](http://www.nmfs.noaa.gov/sfa/hms/hmsdocument_files/sharks.htm).

*Comment 18:* Does NMFS have an idea of the status of common threshers? It seems that they are abundant.

*Response:* To date, NMFS has not conducted a species-specific stock assessment for thresher sharks and their status in the Atlantic Ocean is unknown. However, commercial landings data compiled from the most recent stock assessment documents indicate that approximately 307,291 lb dw of thresher sharks have been landed from 2000 to 2005. Recreational landings data obtained from the recreational landings database for HMS indicates approximately 8,000 thresher sharks have been harvested in the Atlantic HMS recreational shark fishery from 1999 to 2005.

*Comment 19:* NMFS should implement the status quo, Alternative 1,

because this is the only viable option for Amendment 2 until the scientific issues that have been raised are addressed and resolved.

*Response:* As described in response to comments 5 and 10 in this section, NMFS disagrees that the results of the LCS assessment should be put on hold due to concerns raised about the scientific validity and impartiality of reviewers. NMFS has carefully reviewed and considered all public comments received on the assessment and determined that the assessment was appropriate, used the best scientific data available, and is scientifically valid. The 2005 Canadian porbeagle shark stock assessment, the 2006 dusky shark assessment, and the 2005/2006 LCS stock assessment determined that porbeagle, dusky, and sandbar sharks are overfished. Overall, the status quo alternative, which would maintain the current annual LCS quota of 1,017 mt dw, in conjunction with the management measures mentioned above, would have negative ecological impacts on sandbar, dusky and porbeagle sharks, as well as protected resources and marine mammals. The social and economic impacts would likely be neutral because current fishing effort would remain the same in the short term. In the long term, as stocks continue to decline, profits may decrease as costs associated with finding and catching these depleted stocks increases. Management measures are needed to rebuild overfished stocks and prevent overfishing consistent with the mandates of the Magnuson-Stevens Act. Therefore, maintaining the LCS quota of 1,017 mt dw would be inconsistent with the Magnuson-Stevens Act and the recent LCS stock assessment that recommended a TAC of 158.3 mt dw for sandbar sharks in order for this species to rebuild by 2070. Current fishing effort, under the status quo alternative, would lead to continued overfishing of sandbar, porbeagle and dusky sharks, which would prevent these species from rebuilding in the recommended timeframe. As a result, rather than implementing this alternative, NMFS is implementing the quotas and retention limits necessary to rebuild and stop overfishing of several shark species while maximizing scientific data collection by implementing a limited research fishery for sandbar sharks. The final management measures also mitigate some of the significant economic impacts that are necessary and expected under all alternative suites 2 through 5 to reduce fishing mortality as prescribed by recent stock assessments. The final

management measures strike a balance between positive ecological impacts that must be achieved to rebuild and stop overfishing of depleted stocks while minimizing the severity of negative economic impacts that could occur as a result of these measures. By allowing a limited number of historical participants to continue to harvest sandbar sharks within the research fishery, NMFS ensures that data for stock assessments and life history samples would continue to be collected. Directed permit holders not selected to participate in the shark research fishery would still be authorized to land 33 non-sandbar LCS per vessel per trip and incidental permit holders would be authorized to land 3 non-sandbar LCS per trip. This should limit the number of trips targeting non-sandbar LCS sharks; however, it should still afford the opportunity to keep non-sandbar LCS that are landed incidentally, preventing excessive discards.

*Comment 20:* The stock assessment is flawed because sandbar sharks do not occur west of Mobile, Alabama.

*Response:* The stock assessment represents the best available science and included all data that was presented at the Data Workshop for the 2005/2006 LCS stock assessment. Included in the assessment are fishery independent shark surveys that were conducted from 1995–2005 from the NOAA Research Vessel Oregon II. The results of that survey can be found in LCS05–06–DW–27. This survey showed the capture of sandbar sharks in the Gulf of Mexico, including west of Mobile, Alabama (see Figure 4 within LCS05–06–DW–27).

#### 14. National Standards

*Comment 1:* The proposal to prohibit blacktip sharks in the recreational fishery violates NS2 of the Magnuson-Stevens Act because the stock assessment determined that blacktip sharks in the Gulf of Mexico are not overfished.

*Response:* NS2 requires that conservation and management measures be based upon the best scientific information available. NMFS believes that the 2005/2006 LCS stock assessment constitutes the best available science. The 2005/2006 LCS complex, sandbar, and blacktip shark stock assessments were conducting using the SEDAR process. SEDAR is organized around three workshops. All of the workshops are open to the public to ensure that the assessment process is transparent. The review workshop panel consists of a chair and 2 reviewers appointed by the CIE, an independent organization that provides independent, expert reviews of stock assessments and

related work. With regard to the LCS complex assessment, the review panel determined that the data utilized in the assessment were the best available for analysis at the time. For the sandbar shark assessment, the review panel concluded that the population model and resulting population estimates were the best possible given the available data. The review panel was also confident that the 2005/2006 sandbar shark assessment produced more reliable estimates of stock status than previous stock assessments because the SEDAR stock assessment resulted in a more thorough review at all stages of the process. For the blacktip shark assessment in the Atlantic Ocean and Gulf of Mexico, the review panel determined that the data were treated appropriately, were adequate for the models used to assess the stocks and represented the best estimates of assessment information currently available.

In the proposed rule, NMFS proposed an authorized recreational species list that was limited to those species that are easy to identify or that could not be misidentified with other species. NMFS originally proposed to prohibit the retention of blacktip sharks because of the potential for misidentification with spinner sharks, but specifically asked for public comment on the proposed list of prohibited species. As a result, based on public comments received and because blacktip sharks are healthy in the Gulf of Mexico, NMFS is implementing an amended authorized shark species list in the recreational fishery. The amended list is based on readily identifiable characters such as the lack of an inter-dorsal ridge, and allows the landing of non-ridgeback LCS plus tiger sharks. This amended list adds blacktip, spinner, finetooth, porbeagle and bull sharks to the list of authorized species for recreational anglers in all regions.

*Comment 2:* NMFS violated NS4 of the Magnuson-Stevens Act because the commercial fishery will be allowed to catch their TAC and the recreational fishery cannot catch the same species of sharks.

*Response:* NS4 requires that conservation and management measures shall not discriminate between residents of different States, not between participants in different fisheries. The commenter is concerned about perceived discrepancies between allocations to the recreational versus commercial fisheries, which is not a NS4 issue. Based on public comments, NMFS is modifying the list of authorized species in the recreational shark fishery to address concerns

expressed by certain states that prohibiting blacktip and other sharks would unfairly discriminate against the recreational fishery. This amended list more closely aligns with the authorized species in the commercial fishery. NMFS would continue to prohibit sandbar and silky sharks in the recreational fishery due to concerns of misidentification with dusky sharks and because sandbar sharks are overfished. However, most of the commercial sector will not be able to retain sandbar sharks unless fishermen participate in the shark research fishery. Thus, other than in the shark research fishery, NMFS is prohibiting the retention of sandbar sharks in both the commercial and recreational sectors.

*Comment 3:* NMFS violated NS8 of the Magnuson-Stevens Act because Port Aransas is a fishing community and was not treated as such in the analysis.

*Response:* NS8 requires that conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities. NMFS recognizes the importance of Port Aransas, TX and numerous other communities as fishing communities. A social impact and community profile assessment was completed for the 2006 Consolidated HMS FMP. While this community profile assessment did not focus on Port Aransas, TX, Chapter 9 of the Consolidated HMS FMP includes an analysis of the State of Texas as a whole and makes note of specific fishing communities within the state that are important to HMS fishing, including Port Aransas, TX. Because this analysis was recently completed, it was not repeated for the Draft EIS for Amendment 2 to the Consolidated HMS FMP; however, it was referred to in the Draft EIS for Amendment 2 to the Consolidated HMS FMP. The Final EIS for Amendment 2 to the HMS FMP includes a recently completed report by MRAG Americas, Inc., and Jepson (2008) that provides updates to the social impact and community profile assessments for HMS dependent fishing communities. This report can be found in Appendix E and includes Port Aransas.

*Comment 4:* NMFS violated NS9 of the Magnuson-Stevens Act because all the proposed prohibited species will be

management measures strike a balance between positive ecological impacts that must be achieved to rebuild and stop overfishing of depleted stocks while minimizing the severity of negative economic impacts that could occur as a result of these measures. By allowing a limited number of historical participants to continue to harvest sandbar sharks within the research fishery, NMFS ensures that data for stock assessments and life history samples would continue to be collected. Directed permit holders not selected to participate in the shark research fishery would still be authorized to land 33 non-sandbar LCS per vessel per trip and incidental permit holders would be authorized to land 3 non-sandbar LCS per trip. This should limit the number of trips targeting non-sandbar LCS sharks; however, it should still afford the opportunity to keep non-sandbar LCS that are landed incidentally, preventing excessive discards.

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*Comment 4:* NMFS violated NS9 of the Magnuson-Stevens Act because all the proposed prohibited species will be



released and some will die and, thus, bycatch will not be minimized.

*Response:* NS9 says that conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. The reduced commercial shark quotas and retention limits being finalized in this rule are expected to greatly reduce bycatch of target and non-target species. Because of the reduced retention limits outside the research fishery, it is likely that fishermen will not target non-sandbar LCS. In addition, retention limits under the final management measures are such that fishermen targeting non-shark species should be able to retain incidentally caught non-sandbar LCS. Soak times in non-shark BLL and gillnet fisheries are also much shorter than commercial shark sets; these shorter soak times should increase post-release survival of sandbar sharks. Regulatory discards were taken into consideration when determining the quotas and retention limits of sandbar and non-sandbar sharks both inside and outside of the research fishery. In addition, commercial fishermen using BLL and PLL gear are required to have specified safe handling and release gear on board, which should help release shark bycatch in such a manner as to maximize post-release survival. In the recreational fishery, NMFS is modifying the list of authorized species. This amended list more closely aligns with the authorized species in the commercial shark fishery. NMFS intends to increase educational outreach to the recreational fishing sector to increase shark identification to avoid misidentification with prohibited species. Bycatch in the recreational fishery is also minimized because soak times are considerably less than those in commercial fisheries.

#### 15. Economic Impacts

*Comment 1:* NMFS should consider an alternative suite that incorporates a "phase out" of the commercial shark industry. The present stock situation is untenable. Prolonged rebuilding periods are not acceptable. Managing a minimal yet unsustainable large coastal shark fishery violates NS1 of the Magnuson-Stevens Act. The costs of management far outweigh the benefits to a small number of fishermen who target sharks commercially.

*Response:* NMFS did consider a suite in the Draft EIS that would have ended Atlantic commercial shark fishing, alternative suite 5. Under this proposed alternative, shark landings would be limited to research and the collection

for public display via the HMS EFPs. Recreational fisheries would be catch and release only. However, after careful consideration of the other alternatives, this alternative suite was not selected.

Longer rebuilding periods are allowed under NS1 of Magnuson-Stevens Act when the following conditions specified in the NS 1 Guidelines (50 CFR 600.310(e)(4)(ii)(B)(3)):

[i]f the lower limit is 10 years or greater, then the specified time period for rebuilding may be adjusted upward to the extent warranted by the needs of fishing communities...except that no such upward adjustment can exceed the rebuilding period calculated in the absence of fishing mortality, plus one mean generation time or equivalent period based on the species' life-history characteristics.

NMFS recognizes that the costs of managing the shark fishery relative to the level of future shark fishing activity will be high. However, there are non-monetary benefits associated with maintaining a limited commercial shark industry. These benefits include the ability to continue gathering fishery data, maintenance of industry knowledge regarding shark fishing practices, and other potential cultural and social benefits. The final action attempts to balance the economic needs of fishing communities with the recommendations of recent stock assessments. BLL and gillnet gear will continue to be deployed in other fisheries that interact with sharks. Setting a retention limit that allows fishermen to keep a portion of these fish without targeting non-sandbar LCS should minimize dead discards while discouraging targeting of non-sandbar LCS. Allocating the entire sandbar shark quota to a shark research fishery quota should result in collection of data that could improve future stock assessments and the development of management measures for the fishery.

*Comment 2:* NMFS received several comments regarding an industry buyout/buyback. These comments include: the environmentalists should fund a buyout of the commercial shark fishery; NMFS should consider a buyout to provide financial relief for the shark fishermen that will be put out of business as a result of the preferred alternative; NMFS should buy all of the directed shark permits for \$50,000 to \$100,000 because NMFS sold them to fishermen and created this problem; the industry is not in favor of a 5-percent tax to come up with buyout money; a buyout plan aimed at removing longline and gillnet vessels from the shark fishery and other fisheries would reduce fishing pressure, reduce bycatch and protected species interactions, and would address NMFS' concern that

further reducing shark landing quotas will result in redistribution of fishing effort into other equally harmful fisheries.

*Response:* NMFS recognizes that some participants of the Atlantic shark fishery expressed interest in reducing fishing capacity for sharks via some form of buyout program. Buyouts can occur via one of three mechanisms, including: through an industry fee, via appropriations from the United States Congress, and/or funding provided from any State or other public sources or private or non-profit organizations. NMFS cannot independently initiate a buyout. Because NMFS is unable to implement a buyout as a management option, a buyout plan is not proposed in this amendment, despite requests for consideration from the HMS Advisory Panel and other affected constituents.

The shark fishery did develop an industry "business plan" that examined options for a buyout, which is further described in Chapter 1 of the Draft EIS.

*Comment 3:* NMFS should look at data on the number of commercial permit holders by state and the socio-economic impacts of the proposed measures on these fishermen.

*Response:* NMFS examined the number of commercial permit holders by state. This information was presented in Table 9.1 of the Draft EIS. The socio-economic impacts of the preferred measures were analyzed in Chapters 6, 7, and 8 of the Draft EIS for Amendment 2.

*Comment 4:* NMFS received several comments concerning the potential for severe economic impacts associated with all of the alternatives considered (other than status quo). Comments indicated a concern that many fishermen may not be able to survive economically until the next stock assessment. One dealer for example saw a 75-percent decrease in revenue in 2007 because of restrictions. The lack of a shark season in 2008 could bring about a financial collapse of the industry. The industry is completely based on sandbar sharks.

*Response:* NMFS has estimated that the alternatives considered, including the no action alternative, would result in economic consequences to the shark fishery. The severity of the economic consequences varies by alternative suite, with alternative suite 5, the complete closure of the Atlantic shark fishery, having the greatest economic impact. The economic impacts of the various alternative suites are summarized in Table 7.5 of the EIS for Amendment 2.

NMFS acknowledges that dealer impacts could also be substantial and could vary significantly by dealer,

depending upon how important sharks are to their operations.

NMFS recognizes the importance of sandbar shark landings to the shark fishing sector. However, sandbar shark landings only comprised 30-percent of the estimated total value of the shark fishery in 2005 (\$602,764 in sandbar shark meat and \$1,181,803 in fins, versus a total shark fishery revenue of \$6,027,516).

Under the Magnuson-Stevens Act, NMFS is required to develop management measures to rebuild overfished shark stocks and prevent overfishing. The final action attempts to balance the economic needs of fishermen and fishing communities with this requirement.

*Comment 5:* NMFS should include an analysis of the negative economic impacts associated with prohibiting porbeagle sharks in shark tournaments, especially in New England. These tournaments have negligible impacts on porbeagle stocks. An example was provided regarding a tournament that has caught only 4 porbeagle sharks in the past 10 years.

*Response:* NMFS appreciates this additional information regarding the importance of porbeagle sharks in tournament fisheries. Additional information has been incorporated into the final EIS for Amendment 2 to further address the potential economic impacts of a prohibition of porbeagle landings. Based on public comments received, NMFS selected an alternative suite that permits the recreational retention of porbeagle sharks.

NMFS is reviewing existing data sources for recreational landings of porbeagle sharks. Efforts to expand recreational data collection may be necessary to improve information on porbeagle shark landings in recreational fisheries.

*Comment 6:* NMFS should specify what the \$1.8 million fishery-wide economic impacts include: recreational impacts, commercial impacts, or both. Recreational impacts would be significant if sandbar, bull, and blacktip are not authorized to be landed in the recreational fishery. NMFS has grossly underestimated the impact to recreational fishermen in this proposal.

*Response:* The \$1.8 million discussed for the final action is the estimated reduction in gross revenues from sandbar and non-sandbar LCS resulting from the proposed quota reductions to the commercial shark fishery. Impacts to the recreational shark fishing sector were also analyzed. For the final action, these impacts included: the negative economic impacts resulting from the reduced number of sharks that could be

legally landed by recreational anglers, particularly pronounced in areas where blacktip sharks are frequently encountered. In addition, tournaments offering prize categories for sharks could also experience negative economic impacts as a result of not allowing six additional species to be retained in recreational fisheries. Due to a lack of information regarding the relative preferences of shark fishermen to retain shark species over practicing catch-and-release shark fishing, NMFS was unable to quantitatively estimate the economic impacts of the proposed recreational measures restricting the authorized list of species that could be retained.

The final action allows recreational anglers to harvest blacktip, finetooth, bull, spinner, and porbeagle sharks.

*Comment 7:* Proposed measures will result in a year-round fresh shark meat product. Inconsistent seasons are not good for prices and shark meat is currently \$0.30/lb. because the market is flooded so quickly and then seasons are over so soon.

*Response:* NMFS recognizes that moving to one season for the shark fishery could alleviate some of the uncertainty in the market associated with varying shark seasons. Depending on the intensity of fishing effort at the beginning of the season, it is likely that the final action could result in a year-round fresh shark meat market. This could help improve the prices received for shark meat and help offset some of the negative economic impacts associated with this rule.

*Comment 8:* Dealers will not likely be interested in continuing to buy shark products when the proposed measures go into place.

*Response:* NMFS acknowledges that some dealers may opt to no longer participate in the shark fishery. However, the information available to NMFS indicates that several shark dealers already handle small quantities of shark products and, therefore, changes in the shark fishery are unlikely to cause them to change their business practices. Reduced domestic harvest of sandbar sharks could potentially increase the value of harvest in the future due to reduced supplies. Furthermore, having the season open for a longer period of time each year, subject to reduced retention limits, may enhance the domestic shark meat market and increase prices.

*Comment 9:* Closing fisheries increases the quantity of fisheries products imported into the United States and other countries do not have the conservation measures that are present in the United States.

*Response:* The United States imports modest quantities of shark fishery products. According to U.S. Census Bureau data, the United States imported 459 mt of shark in 2006 with an estimated value of \$3.41 million. In contrast, the United States exported 1597 mt of shark in 2006 estimated to be worth \$6.17 million. The United States may be an important transshipment port for shark fins, which may be imported wet, and then processed and exported dried. The United States is, in fact, a net exporter of shark species. NMFS acknowledges that other countries may not have the same shark conservation measures as the United States.

*Comment 10:* Commenters suggested that NMFS should implement a retraining program for fishermen and families that are displaced by this action. Others suggested fishermen reconfigure their businesses towards providing tourism services.

*Response:* NMFS has worked with a number of other agencies/departments to explore programs that are available to fishermen and other businesses affected by fishery management measures. Some of these include retaining programs.

The Economic Development Administration (EDA) was created to create new jobs and retain existing jobs in economically stressed communities. Through a series of grant programs, the EDA helps distressed communities develop strategies to improve their own economic situation through a multifaceted cooperative effort. Most of the EDA activity affecting the fishing industry has been funded through the EDA's Public Works Program and the EDA's Economic Adjustment Program. The Public Works Program has funded port and harbor improvements. The Economic Adjustment Program helps communities adjust to serious changes in their economic situation, and proceeds from this program are generally used for organization, business development, revolving loan funds, infrastructure, and market research. Interested parties can learn more about these programs, including eligibility requirements and contact information, by visiting the EDA website: <http://www.eda.gov/>.

The U.S. Department of Labor's Economic Dislocation and Worker Adjustment Assistance Act provides funds to States and local substate grantees so they can help dislocated workers find and qualify for new jobs. It is part of a comprehensive approach to aiding workers who have lost their jobs that also includes provisions of the Worker Adjustment and Retraining Notification Act and the Trade

Delaware, and Pennsylvania. The Consolidated HMS FMP only regulates fisheries in Federal waters.

*Comment 2:* In the "old" Magnuson-Stevens Act (before reauthorization), there was a section indicating that if NMFS reduces incomes by 13-percent, then fishermen are supposed to receive due compensation.

*Response:* The current Magnuson-Stevens Act has no such provision.

*Comment 3:* NMFS should allow vessel owners to keep sharks that are dead at haulback if observers are onboard the vessel.

*Response:* NMFS did not consider modifying this provision in Amendment 2 to the Consolidated HMS FMP. Generally speaking, the observers are onboard to monitor fishing activities. It is the responsibility of the vessel operator and crew, not the responsibility of observer, to predict whether or not sharks caught during fishing activities would survive if released. All sharks that are not, or cannot be, possessed must be released in a manner that would maximize their chances of survival. Allowing dead sharks to be harvested only when observers are onboard could potentially put them in more of an enforcement role which is not the intent of the fisheries observer program. Furthermore, this might encourage fishermen to fish in a different manner when observers are onboard. Modifying the soak time or types of hooks and bait deployed to ensure that more sharks are dead at haulback would not provide the observer program with data that is representative of fishing behavior when observers are not present. Increasing the number of sharks that are harvested in this manner may have negative ecological impacts on shark populations.

*Comment 4:* NMFS should consider making video copies of the shark identification workshops, so that those who do not have the money to travel may watch the presentation.

*Response:* NMFS may consider alternative methods for shark dealers to renew their shark identification certificates as long as the original objectives of the identification workshops are met. Alternative methods may include, but are not limited to, renewing identification certificates via the Internet.

*Comment 5:* NMFS should manage all fish caught on BLL gear collectively, including grouper and tilefish. When fishing for sharks, we cannot keep snapper, yet we have a combined fishery. These should not be managed separately.

*Response:* The HMS Management Division is responsible for managing Atlantic sharks, tunas, billfish, and swordfish. Currently, Fishery Management Councils recommend management measures for grouper and tilefish to NMFS. The relevant Council or Councils depends upon the specific region(s) involved. NMFS may consider more cooperative management initiatives in the future, as necessary.

*Comment 6:* Will shark fishing be closed until this Amendment is implemented?

*Response:* Fishing for large coastal sharks will be closed through the second trimester. A final rule describing the seasons and quota for the first and second trimester of 2008 was published in the **Federal Register** on November 29, 2007 (72 FR 67580).

*Comment 7:* NMFS needs to realize that fishermen are still going to go fishing for other species year-round. As a result, fishermen are going to end up killing sharks and discarding them dead. Another fishery is going to get more pressure as a result of these measures because shark fishermen are not going to stop fishing.

*Response:* NMFS understands that participants in the shark fishery also participate in numerous other fisheries. Reductions in fishing mortality that result from this amendment will likely result in fishing effort shifting from the shark fishery to other fisheries in which participants maintain permits. Reduced retention limits and the fact that sandbar sharks will only be landed in the shark research fishery are expected to result in trips targeting other species. NMFS has devised retention limits and seasons such that fishermen targeting other non-shark species will be able to possess a limited number of non-sandbar LCS incidentally, minimizing the need to discard sharks dead.

*Comment 8:* NMFS should clarify what the gear limitations within the shark research fishery are and whether or not participants would be able to possess sandbar sharks if they have an observer onboard.

*Response:* Gear limitations within the shark research fishery will depend on annual research objectives. An objective of the shark research fishery is to continue to collect fishery-dependent data that reflects how the fishery operated historically. Therefore, BLL gear will likely be the predominant gear deployed. However, research objectives might also require participants to deploy alternative gear types to discern their feasibility and impacts on target and non-target catch. Vessels issued a shark research permit will only be able to possess sandbar sharks when they

have a NMFS-approved observer onboard.

*Comment 9:* NMFS should not require fishermen to fill out a logbook when they only use dealer data. Instead of logbooks, NMFS should use carbon copies of trip tickets that are submitted to dealers.

*Response:* NMFS uses logbook data in addition to data collected from dealer reports. Logbooks provide vessel specific landings and effort data that are not reflected in shark dealer data. These data can be used by managers and scientists in a variety of ways to aid in managing and understanding the fishery. Sharks dealer data are used specifically for quota monitoring and stock assessments but are often combined and used with logbook data for other management purposes.

*Comment 10:* NMFS should consider reducing soak time as a means of reducing the number sandbar shark dead discards.

*Response:* NMFS has examined the regulation of soak times to reduce fishing mortality and dead discards, however, NMFS found that it would be extremely difficult to monitor and enforce soak times.

*Comment 11:* NMFS should consider placing observers on all vessels and letting all fishermen continue to fish for sharks. That is how NMFS will get accurate data.

*Response:* NMFS is requiring that observers are present on all trips within the shark research fishery. A limited number of vessels selected to participate in the research fishery will continue to be able to fish for sharks, including sandbar sharks, subject to available quota. NMFS is also attempting to maintain adequate observer coverage outside the research fishery.

*Comment 12:* These measures will cause a large increase in dead discards, which equals wasted fish and wasted money.

*Response:* The final action effectively creates an incidental fishery for sharks. The allowance for incidental landings and seasons that are open longer than they have been historically should minimize a large increase in dead discards. Dead discards could potentially increase if there were a reduced retention limit or if the shark season were closed for extensive periods during which all sharks would be discarded at sea.

*Comment 13:* NMFS should consider physically enhancing habitat to protect these species.

*Response:* Habitat enhancement does not address removal of sharks. Existing fishing mortality levels for sandbar and dusky sharks indicate that these species

Delaware, and Pennsylvania. The Consolidated HMS FMP only regulates fisheries in Federal waters.

*Comment 2:* In the "old" Magnuson-Stevens Act (before reauthorization), there was a section indicating that if NMFS reduces incomes by 13-percent, then fishermen are supposed to receive due compensation.

*Response:* The current Magnuson-Stevens Act has no such provision.

*Comment 3:* NMFS should allow vessel owners to keep sharks that are dead at haulback if observers are onboard the vessel.

*Response:* NMFS did not consider modifying this provision in Amendment 2 to the Consolidated HMS FMP. Generally speaking, the observers are onboard to monitor fishing activities. It is the responsibility of the vessel operator and crew, not the responsibility of observer, to predict whether or not sharks caught during fishing activities would survive if released. All sharks that are not, or cannot be, possessed must be released in a manner that would maximize their chances of survival. Allowing dead sharks to be harvested only when observers are onboard could potentially put them in more of an enforcement role which is not the intent of the fisheries observer program. Furthermore, this might encourage fishermen to fish in a different manner when observers are onboard. Modifying the soak time or types of hooks and bait deployed to ensure that more sharks are dead at haulback would not provide the observer program with data that is representative of fishing behavior when observers are not present. Increasing the number of sharks that are harvested in this manner may have negative ecological impacts on shark populations.

*Comment 4:* NMFS should consider making video copies of the shark identification workshops, so that those who do not have the money to travel may watch the presentation.

*Response:* NMFS may consider alternative methods for shark dealers to renew their shark identification certificates as long as the original objectives of the identification workshops are met. Alternative methods may include, but are not limited to, renewing identification certificates via the Internet.

*Comment 5:* NMFS should manage all fish caught on BLL gear collectively, including grouper and tilefish. When fishing for sharks, we cannot keep snapper, yet we have a combined fishery. These should not be managed separately.

*Response:* The HMS Management Division is responsible for managing Atlantic sharks, tunas, billfish, and swordfish. Currently, Fishery Management Councils recommend management measures for grouper and tilefish to NMFS. The relevant Council or Councils depends upon the specific region(s) involved. NMFS may consider more cooperative management initiatives in the future, as necessary.

*Comment 6:* Will shark fishing be closed until this Amendment is implemented?

*Response:* Fishing for large coastal sharks will be closed through the second trimester. A final rule describing the seasons and quota for the first and second trimester of 2008 was published in the **Federal Register** on November 29, 2007 (72 FR 67580).

*Comment 7:* NMFS needs to realize that fishermen are still going to go fishing for other species year-round. As a result, fishermen are going to end up killing sharks and discarding them dead. Another fishery is going to get more pressure as a result of these measures because shark fishermen are not going to stop fishing.

*Response:* NMFS understands that participants in the shark fishery also participate in numerous other fisheries. Reductions in fishing mortality that result from this amendment will likely result in fishing effort shifting from the shark fishery to other fisheries in which participants maintain permits. Reduced retention limits and the fact that sandbar sharks will only be landed in the shark research fishery are expected to result in trips targeting other species. NMFS has devised retention limits and seasons such that fishermen targeting other non-shark species will be able to possess a limited number of non-sandbar LCS incidentally, minimizing the need to discard sharks dead.

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*Comment 13:* NMFS should consider physically enhancing habitat to protect these species.

*Response:* Habitat enhancement does not address removal of sharks. Existing fishing mortality levels for sandbar and dusky sharks indicate that these species

are experiencing overfishing and that the stocks have been overfished. Habitat enhancement was not considered in this action because, in isolation, it does not address overfishing or rebuilding of overfished stocks.

*Comment 14:* NMFS should require shark fishermen to take the shark dealer identification course.

*Response:* The public, including shark fishermen, is welcome to attend the shark identification courses provided by NMFS. It is currently voluntary for shark fisherman to participate in shark identification courses. NMFS wants to ensure that shark dealers are aware of how to properly identify sharks because NMFS uses information from shark dealer reports to monitor the quota during the fishing season. Further, shark dealer reports play a critical role in conducting stock assessments. NMFS may consider expanding the groups of participants required to complete these workshops in the future.

*Comment 15:* The Magnuson-Stevens Act says to rebuild overfished stocks by 2012. NMFS should not use rebuilding schedules that require hundreds of years.

*Response:* Longer rebuilding periods are allowed under NS1 of Magnuson-Stevens Act when the following conditions specified in the NS1 Guidelines are met, which is the case with the species that are being rebuilt in this amendment. The regulatory text at 50 CFR 600.310(e)(4)(ii)(B)(3) states:

[i]f the lower limit is 10 years or greater, then the specified time period for rebuilding may be adjusted upward to the extent warranted by the needs of fishing communities....except that no such upward adjustment can exceed the rebuilding period calculated in the absence of fishing mortality, plus one mean generation time or equivalent period based on the species' life-history characteristics.

*Comment 16:* NMFS should not require the public to attend identification workshops for sharks when shark fishing will essentially be banned.

*Response:* While shark fishing will be substantially reduced under this Amendment, there will still be incidentally caught sharks. Accurate shark identification will be important for gathering information for future management.

*Comment 17:* Fishermen should be allowed to keep dead dusky sharks on haulback because discarding dead sharks is a waste.

*Response:* Dusky sharks are a prohibited species that must be released. NMFS has determined that dusky sharks are a prohibited species because their life history is not conducive to commercial or recreational

fisheries targeting them. Dusky sharks are late-maturing and have very few offspring. Further, these species do not have high post release survival on longline gear. NMFS continues to discourage fishermen from targeting dusky sharks because the recent stock assessment indicates that dusky sharks are overfished and experiencing overfishing despite being listed as a prohibited species since 2000.

*Comment 18:* NMFS needs to consider an exit strategy in case things do not work out as planned in the amendment.

*Response:* NMFS believes that this Amendment allows for sufficient flexibility to make adjustments as conditions may change in the fishery. Furthermore, regulations are constantly being reviewed for their utility and whether or not they are meeting their stated objectives. Additional regulations are expected as new stock assessments become available.

*Comment 19:* NMFS needs to improve international management with Mexico to manage sharks throughout their range.

*Response:* NMFS is currently working through the appropriate international foras to improve shark management in Mexico.

*Comment 20:* NMFS should consider adding a "use it or lose it" requirement on shark permits.

*Response:* Measures requiring shark fishermen to demonstrate landings history or risk losing their commercial shark fishing permit were not considered in this amendment. The addition of a "use it or lose it" condition on shark permits may actually result in increased pressure on sharks if holders of latent permits are compelled to use their permits sufficiently to avoid losing them in the future.

*Comment 21:* There is an inconsistency in the Draft EIS, Chapter 3 page 16. This presents state regulations, and fails to mention that longline gear is also prohibited in Georgia's state waters. Additionally, Georgia's Small Shark Composite should have the acronym SSC, not SCS, which is the federal Small Coastal Sharks management group.

*Response:* These inconsistencies have been addressed in the Final EIS.

*Comment 22:* There is new scientific evidence that oceanic whitetip shark stocks have declined.

*Response:* NMFS has not conducted a stock assessment for oceanic whitetips. NMFS will continue to work with international partners and ICCAT towards more species-specific assessments for pelagic sharks. Data may be a limiting factor, however, as there are limited landings data for

oceanic whitetip sharks. To date, ICCAT has completed assessments for blue and shortfin mako sharks. There is scant data available on oceanic whitetip landings.

*Comment 23:* The Draft EIS does little to address bycatch of protected species aside from the suggestion that the preferred alternative may provide a mechanism to conduct the field trials necessary to appropriately assess the efficacy of circle hooks for reducing bycatch and post-hooking mortality of sea turtles in the BLL fishery. While both the pelagic and BLL fisheries are required to carry tools to remove gear from turtles before they are released, there are no performance goals for removing gear or a requirement to use circle hooks for bycatch of protected species.

*Response:* NMFS may consider additional management measures for reducing bycatch in the future. NMFS has prepared a new BiOp regarding the proposed actions under Amendment 2 to the Consolidated HMS FMP, which was released on May 20, 2008. The May 2008 BiOp concluded based on the best available scientific information, the proposed action is not likely to jeopardize the continued existence of endangered green, leatherback, and Kemp's ridley sea turtles; the endangered smalltooth sawfish; or threatened loggerhead sea turtle. The proposed actions are not expected to increase endangered species or marine mammal interaction rates. Furthermore, the BiOp concluded that the proposed actions are not likely to adversely affect any of the listed species of marine mammals, invertebrates (i.e., listed species of coral) or other listed species of fish (i.e., Gulf sturgeon and Atlantic salmon) in the action area. HMS is implementing Amendment 2 to the Consolidated HMS FMP consistent with the May 2008 BiOp.

*Comment 24:* If Atlantic and Gulf of Mexico fisheries are to continue, 100-percent observer coverage should be required.

*Response:* In 2007 and 2008, NMFS is implementing 100-percent observer coverage for vessels operating in the Gulf of Mexico with PLL gear. Outside of this period, a statistically significant level of observer coverage will be used that is consistent with relevant Biological Opinions and other factors.

*Comment 25:* Deepwater sharks need protection. This group of sharks is simply too vulnerable to sustain fisheries so NMFS should prevent the development of fisheries before any fishermen invest in them. The deep water shark complex needs attention and it was a major mistake to remove

fishermen based on public comment and a request from enforcement.

8. In § 635.27(b), the commercial quotas were modified based on public comment and additional analyses. Specifically, a porbeagle shark quota was added, unclassified sharks will be counted towards the appropriate species quota based on ratios in observer data and/or on shark dealer reporting forms, the non-sandbar LCS quota was split into two regions (modified from the current definition to clarify that the Florida Keys are located in the Gulf of Mexico region), and an adjusted base quota from the effective date of this rule through 2012 (five years) was added to account for overharvests in 2007. Future overharvests will generally be taken off the following year, as proposed. However, depending on the amount of future overharvests, NMFS may deduct the overharvests over several years up to a maximum of five years. Spreading the overharvests out should, among other things, ensure that the shark research fishery can continue to collect much-needed data each year.

Additionally, NMFS clarified the section on adjusting quotas based on underharvests to clarify that if a species in a particular quota group (e.g., non-sandbar LCS) were overfished, overfishing were occurring, or had an unknown status, then NMFS would not adjust the quota based on underharvests.

9. In § 635.28(b), the section was modified, based on public comment, to allow for all species groups and regions to be closed separately, instead of together as proposed, when the fishery is expected to reach 80 percent of the relevant quota.

10. In § 635.30(c)(2) and (3), sentences were added, corresponding to the added definitions of “naturally attached” and “dress,” to clarify the regulation to keep all fins attached to the corresponding shark carcass, including the upper lobe of the tail, through offloading and to state specifically that no shark fins are allowed on a vessel unless the fins are naturally attached to a shark carcass.

11. In § 635.31, paragraph (c)(1) was added to clarify that persons may only sell sharks if both the fishery and/or region is open.

12. In § 635.32(f), additional specifics regarding the required items on the application and the process for issuing shark research permits were added based on public comment, requests by NOAA's Office of Law Enforcement, and requests by NMFS scientists. These specifics include the requirement for vessels to have complied with observer coverage regulations and HMS fishery regulations to be eligible for a shark

research permit under this part.

Additional clarifications on how NMFS will select vessels have been added.

13. In § 635.71, various prohibitions have been updated or modified based on the changes listed above.

#### Commercial Fishing Season Notification

The 2008 adjusted commercial quotas for each shark species group is as follows: sandbar shark (shark research fishery only) = 87.9 mt dw; non-sandbar LCS = 615.8 mt dw; pelagic sharks other than blue or porbeagle = 488 mt dw; blue shark = 273 mt dw; porbeagle shark = 1.7 mt dw; and SCS = 454 mt dw. The non-sandbar LCS commercial quota is further split by region and fishery as follows: Atlantic region = 187.8 mt dw; Gulf of Mexico region = 390.5 mt dw; and shark research fishery = 37.5 mt dw.

On July 24, 2008, the sandbar, non-sandbar LCS, pelagic shark, blue shark, porbeagle shark, and SCS fisheries will open under the quotas noted above. All of these fisheries will remain open through December 31, 2008, unless the quota for that shark species group (or in the case of non-sandbar LCS, regional area) is projected to reach 80 percent of its available quota. When calculating the percent of the available quota caught for each species and/or region, NMFS will include landings from January 1, 2008, through July 24, 2008. As specified in § 635.27(b)(1), once the landings for that shark species group or regional area reach 80 percent of its quota, NMFS will file for publication with the Office of the Federal Register an appropriate rulemaking for that shark species group that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure, until NMFS announces via a notice in the **Federal Register** that additional quota is available, the fishery for that shark species group and/or regional area is closed, even across fishing years.

When the fishery for a shark species group and/or regional area is closed, a fishing vessel issued an Atlantic Shark LAP pursuant to § 635.4 may not possess or sell a shark of that species group, except under the conditions specified in § 635.22(a) and (c) or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard. A shark dealer issued a permit pursuant to § 635.4 may not purchase or receive a shark of that species group from a vessel issued an Atlantic Shark LAP, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. In

the case of non-sandbar LCS, during a regional fishing closure, a fishing vessel issued an Atlantic Shark LAP pursuant to § 635.4 and operating in region(s) closed to shark fishing may not possess or sell a shark of that species group, except under the conditions specified in § 635.22(a) and (c). A shark dealer issued a permit pursuant to § 635.4 and located in the closed region may not purchase or receive a shark of that species group from a vessel issued an Atlantic Shark LAP, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Under a closure for a shark species group and/or regional closure, a shark dealer issued a permit pursuant to § 635.4 may, in accordance with state regulations, purchase or receive a shark of that species group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in state waters and that has not been issued a Shark LAP, HMS Angling permit, or HMS CHB permit pursuant to § 635.4. Additionally, under a closure for a shark species group and/or regional closure, a shark dealer issued a permit pursuant to § 635.4 may purchase or receive a shark of that species group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel issued a valid shark research permit (per § 635.32) that had a NMFS-approved observer on board during the trip during which sharks were collected.

#### Classification

The Assistant Administrator for Fisheries determined that Amendment 2 to the Consolidated HMS FMP is necessary for the conservation and management of the Atlantic shark fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

NMFS prepared a FEIS for this FMP amendment. The FEIS was filed with the Environmental Protection Agency on April 11, 2008. A notice of availability was published on April 18, 2008 (73 FR 21124). In approving the FMP amendment, NMFS issued a Record of Decision (ROD) on June 6, 2008, identifying the selected alternatives. A copy of the ROD is available from NMFS (see **ADDRESSES**).

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

This final rule contains a collection-of-information requirement subject to the PRA and which has been approved by OMB under Control Number 0648–

0471. Public reporting burden for the HMS EFP, SRP, display permit, shark research permit, and letter of authorization information collection is estimated to average 2 hours per scientific research plan; 40 minutes per application, including the shark research permit application; 15 minutes per request for amendment to the EFP; 1 hour per interim report; 2 minutes per "no catch" report; 40 minutes per annual report; 5 minutes per departure notification regarding collection of display animals; 10 minutes per notification call for observer coverage for the shark research fishery; and 2 minutes per tag application. These burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

This rule also contains revisions to collection of information 0648-0040. The revisions are subject to review and approval by OMB under PRA. Currently, this collection of information is under review at OMB for revisions other than those contained in this rule (73 FR 18473, April 4, 2008). Once OMB approves the revisions in that rule, NMFS will submit a PRA package to OMB for approval regarding the addition of a check box on the dealer form. This check box would allow the dealer to note whether the shark fins were attached to the shark at landing or not. NMFS does not expect that the addition of a check box regarding shark fins would add to the reporting burden. NMFS will publish a document in the **Federal Register** to announce the effective date of the information collection.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

With the release of the proposed rule on July 27, 2007, NMFS determined that the management measures in this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the enforceable policies of the approved coastal management programs of states with Coastal Zone Management Act (CZMA)

programs that are located in the Atlantic Ocean and Gulf of Mexico. This determination was submitted for review by the responsible state agencies under section 307 of the CZMA. On October 10, 2007, Georgia's Department of Natural Resources (GDNR) objected to NMFS' consistency determination that the provisions in Amendment 2 to the Consolidated HMS FMP are consistent, to the maximum extent practicable, with the enforceable policies of the Georgia Coastal Zone Management Program (GCZMP). The October 10, 2007, letter stated that NMFS failed to consider the elimination of the use of shark gillnets in Amendment 2 to the Consolidated HMS FMP. GDNR claims that the use of gillnets in Federal waters is inconsistent with the GCZMP because the program bans the use of gillnet and longline gear in state waters to address bycatch of protected species and marine mammals.

NMFS considered the comments in the October 10, 2007, letter and, for the reasons stated below, has determined that the final actions in Amendment 2 to the Consolidated HMS FMP, including allowing the use of gillnet gear in the Atlantic shark fishery, are consistent to the maximum extent practicable with the enforceable policies of the GCZMP, 15 CFR 930.32.

NMFS shares the State of Georgia's concern regarding the impact of the shark gillnet fishery on threatened and endangered species. Given these impacts, NMFS will not implement measures that increase fishing effort with this gear type, such as setting gillnet specific retention limits for blacktip sharks. However, NMFS also recognizes that the data currently available indicate relatively low rates of bycatch and bycatch mortality of protected species and other finfish in the shark gillnet fishery compared to other HMS and non-HMS fisheries. It is worth noting that observer coverage rates in the shark gillnet fishery are higher than in other fisheries because of Atlantic Large Whale Take Reduction Plan requirements. Increased observer coverage reduces the associated error that can be introduced when calculating bycatch and protected resource interactions on non-observed trips. For instance, observer reports indicate that finfish bycatch in shark gillnet fishery during 2007 ranged from 1.7 to 13.3 percent of the total catch. In addition, observed protected species bycatch (sea turtles and marine mammals) was less than 0.1 percent of the total catch. Therefore, NMFS does not believe it is appropriate to eliminate this fishery and shift its associated effort to other fisheries that have higher interaction

rates with protected resources and marine mammals.

In addition, according to recent observer reports, only four to six vessels use shark gillnet gear, therefore, the cumulative impact of this fishery is not expected to have significant ecological impacts on non-target species. The incidental capture of endangered species in the shark gillnet fishery is regulated under the Endangered Species Act (ESA). A BiOp issued May 20, 2008, in response to the actions taken in the Final Amendment 2 to the Consolidated Atlantic Highly Migratory Species Fishery Management Plan, concluded, that the continuation of the shark gillnet (including strikenets, drift gillnets, and sink gillnets) fishery would not likely jeopardize the continued existence of protected species or result in the destruction or adverse modification of critical habitat. Furthermore, the BiOp indicated that shark strikenets are not likely to have much impact on sea turtle or smalltooth sawfish takes because deployment of this gear currently results in very few takes. Interactions with protected resources occur more frequently with drift or sink gillnets than using strikenets, but gillnet gear interactions with protected resources are still minimal compared to longline fishing.

In addition, currently, all shark gillnet vessels are required to carry VMS and are subject to observer coverage during and outside of the right whale calving season. The most recent regulations amending the Atlantic Large Whale Take Reduction Plan were published in the **Federal Register** on June 25, 2007 (72 FR 34632), and on October 5, 2007 (72 FR 57104). These regulations include a variety of measures aimed at reducing the likelihood of an interaction between shark gillnet gear and right whales. These regulations include, but are not limited to, prohibiting all gillnet fishing from November 15 through April 15 of each year in Federal waters off the state of Georgia. NMFS will continue to work with the take reduction teams and relevant Fishery Management Councils to examine methods to reduce bycatch.

NMFS acknowledges the concerns raised by the State of Georgia regarding protected resources interactions and bycatch that occurs in gillnet gear. Under the Magnuson-Stevens Act National Standards (16 U.S.C. 1851(a)(1), (3), (8), and (9)), NMFS must, among other things, implement conservation and management measures to prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery; manage stocks throughout their range to the extent practicable; minimize adverse economic

impacts on fishing communities to the extent practicable; and minimize bycatch and bycatch mortality to the extent practicable. Gillnets are the commercial gear that are used to primarily target small coastal sharks (SCS) and blacktip sharks. The SCS complex was assessed in 2007; three of the four species of SCS have been determined to not be overfished with overfishing not occurring. Blacknose sharks have been determined to be overfished with overfishing occurring; therefore, NMFS has initiated development of a rebuilding plan for this species and measures to end overfishing. These measures may include changes to the shark gillnet fishery, as necessary. However, the latest blacktip stock assessment recommended not changing catches of blacktip sharks in the Atlantic Ocean. Therefore, based on the best scientific information available, Amendment 2 to the Consolidated HMS FMP would manage the fishery for optimum yield by keeping the SCS quota at the status quo level and setting a non-sandbar large coastal shark (LCS) quota (including blacktip sharks) based on historical landings. Given that the non-sandbar LCS quota is based on the latest blacktip shark assessment, closing the shark gillnet fishery in Federal waters off Georgia would not facilitate achieving the optimum yield from the fishery and managing the stocks throughout their range. Thus, NMFS is not prohibiting shark gillnet gear at this time due to the negative social and economic impact this would have on the four to six vessels actively fishing in the shark gillnet fishery. In addition, NMFS has implemented high-levels of observer coverage on gillnet vessels targeting sharks as well as those targeting other species to monitor bycatch and interactions with protected resources; NMFS can take additional action if interactions with protected resources in the this fishery become a problem.

At this time, there is not sufficient information to support a closure of the shark gillnet fishery in Federal waters adjacent to Georgia, pursuant to the Coastal Zone Management Act. This decision is consistent with National Standard 2 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson-Stevens Act), which requires that management measures be based on the best scientific information available including the BiOp. NMFS has determined that the final actions in Amendment 2 to the Consolidated HMS FMP and its implementing rule are

consistent to the maximum extent practicable with the enforceable policies of the GCZMP. Accordingly, this rule, which that finalizes Amendment 2 to the Consolidated HMS FMP, will not ban gillnet gear in the Atlantic shark fishery.

#### *Summary of the Final Regulatory Flexibility Analysis*

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the economic analyses completed to support the action. A summary of the analysis, which addresses each of the requirements in 5 U.S.C. 604(a)(1)-(5), can be found below. A copy of the full analysis is available in Amendment 2 to the Consolidated HMS FMP (see **ADDRESSES**).

#### *Statement of the Need for and Objectives of this Final Rule*

The need for and objectives of the final rule are fully described in the preamble of the proposed rule (72 FR 41392, July 27, 2007) and in Final Amendment 2 to the Consolidated HMS FMP and are not repeated here (5 U.S.C. 604(a)(1)). In summary, the selected actions in this final rule will rebuild overfished shark fisheries by: reducing the commercial quotas, adjusting the commercial retention limits, establishing a shark research fishery, requiring commercial vessels to maintain all fins on the shark carcasses through offloading, establishing two regional quotas for non-sandbar large coastal sharks (LCS), establishing one annual season for commercial shark fishing, changing the reporting requirements for dealers (including swordfish and tuna dealers), establishing additional time/area closures for BLL fishermen, and changing the authorized species for recreational fishermen. This rule also establishes the 2008 commercial quota for all shark species groups. These changes affect all commercial and recreational shark fishermen and shark dealers.

#### *A Summary of the Significant Issues Raised By the Public Comments in Response to the IRFA, a Summary of the Assessment of NMFS of Such Issues, and a Statement of Any Changes Made in the Rule as a Result of Such Comments*

A FRFA is also required to include a summary of the significant issues raised by the public comments in response to

the IRFA, a summary of the assessment of the issues raised, and a statement of any changes made in the rule as a result of the comments (5 U.S.C. 604(a)(2)). NMFS received many comments on the proposed rule and draft EIS during the public comment period. A summary of these comments and NMFS' responses are included above. The specific economic concerns raised in comments are also summarized here.

NMFS received a comment that NMFS should consider an alternative suite that incorporates a "phase out" of the commercial shark industry. NMFS did consider such an alternative in the Draft EIS that would have ended Atlantic commercial shark fishing, Alternative Suite 5. Under this alternative, shark landings would have been limited to research and the collection for public display via the HMS Exempted Fishing Program. Recreational fisheries would have been catch and release only. However, after careful consideration of the other alternatives, this alternative suite was not preferred due to the economic costs associated with a complete closure as discussed in Chapter 6 of Amendment 2 to the Consolidated HMS FMP.

NMFS received several comments regarding an industry buyout/buyback. NMFS recognizes that some participants of the Atlantic shark fishery expressed interest in reducing fishing capacity for sharks via some form of buyout program. Buyouts can occur via one of three mechanisms, including: through an industry fee, via appropriations from the United States Congress, and/or with funds provided from any State or other public sources or private or non-profit organization. A buyout plan is not proposed in this rulemaking, despite requests for consideration from the HMS Advisory Panel and other affected constituents, because NMFS is unable to independently implement a buyout as a management option. Buyouts must be initiated via one of the aforementioned mechanisms. The shark fishery did develop an industry "business plan" that examined options for a buyout, which is further described in Chapter 1 of the Draft Amendment 2 to the Consolidated HMS FMP.

NMFS received several comments concerning the potential for severe economic impacts associated with all of the alternatives considered (other than status quo). Comments indicated a concern that many fishermen may not be able to survive economically until the next stock assessment. NMFS estimated that the alternatives considered, including the no action alternative, would result in economic consequences to the shark fishery. The



severity of the economic consequences varies by alternative suite, with alternative suite 5, the complete closure of the Atlantic shark fishery, having the greatest economic impact.

It was also suggested that NMFS should include analysis of the negative economic impacts associated with prohibiting porbeagle sharks in shark tournaments, especially in New England. NMFS appreciates this additional information regarding the importance of porbeagle sharks in tournament fisheries. Additional information has been incorporated into the final EIS for Amendment 2 to the Consolidated HMS FMP to further address the potential economic impacts of a prohibition of porbeagle landings. However, based on strong support from the public not to prohibit retention of porbeagle sharks and NMFS' recognition of the negative impacts of such a prohibition, NMFS is choosing not to prohibit the recreational retention of porbeagle sharks.

Comments indicated that economic impacts on recreational fisheries would be significant if sandbar, bull, and blacktip sharks were prohibited in the recreational fishery. Comments indicated that the negative economic impacts resulting from the reduced number of sharks that could be legally landed by recreational anglers would be particularly pronounced in areas where blacktip sharks are frequently encountered. In addition, tournaments offering prize categories for sharks could also experience negative economic impacts as a result of not allowing six additional species to be retained in recreational fisheries. Due to a lack of information regarding the relative preferences of shark fishermen to retain shark species over practicing catch-and-release shark fishing, NMFS was unable to quantitatively estimate the economic impacts of the proposed recreational measures restricting the authorized list of species that could be retained. In part to mitigate these impacts, the final preferred alternative suite would allow recreational anglers to retain blacktip, finetooth, blacknose, bull, spinner, and porbeagle sharks.

Comments also indicated a concern that dealers will not likely be interested in continuing to buy shark products when the proposed measures go into place. NMFS acknowledges that some dealers may opt to no longer participate in the shark fishery due to the decrease in volume of shark product that is anticipated under the reduced quotas. Handling low volumes of shark product may not be profitable for some dealers. However, the information available to NMFS indicates that several shark

dealers already handle small quantities of shark products, and therefore, changes in the shark fishery are unlikely to cause them to change their business practices. Reduced domestic harvest of sandbar sharks could potentially increase the value of shark product in the future due to reduced supplies. Furthermore, having the season open for a longer period of time each year, subject to reduced retention limits, may enhance the domestic shark meat market and increase prices.

Several comments suggested NMFS should implement a retraining program for fishermen and families that are displaced by this action. Others suggested that fishermen reconfigure their businesses towards providing tourism services. NMFS has worked with a number of other agencies/departments to explore programs that are available to fishermen and other businesses affected by fishery management measures. Some of these include retraining programs and financial assistance and would mitigate some of the economic impacts of this rule. These programs are further discussed in response to comments provided above.

Commenters also suggested that NMFS consider giving shark fishermen swordfish handgear permits in order to help offset negative economic impacts, while also increasing swordfish landings. NMFS did not propose changes to the permit system pursuant to the rulemaking; however, NMFS will take this suggestion under consideration for future actions. NMFS notes that the swordfish handgear permit is a limited access permit. Therefore, issuing new swordfish handgear permits may result in negative economic impacts to current holders of swordfish handgear permits. In addition, NMFS recently issued new regulations to revitalize the swordfish fishery and may consider additional measures in the future depending on the outcome of the current regulatory changes.

NMFS received a comment questioning whether shark permits will still have any value after the proposed management changes take place. It is difficult to predict the value of shark directed and incidental permits before management measures associated with this Amendment are implemented. It is likely that the value of shark permits may be decreased as a result of quota reductions and reduced retention limits. However, there will still be some demand for shark permits by new entrants into the commercial swordfish and tuna fisheries who will need all three HMS permits to fish.

NMFS received comments indicating that requiring fishermen to land sharks with fins on will change the entire pricing of shark product. Commenters suggested that NMFS could be changing the whole valuation process by requiring that sharks have their fins on. The requirement to land sharks with their fins attached would allow fishermen to leave the fins attached by just a small piece of skin so that the shark could be packed efficiently on ice at sea. Shark fins could then be quickly removed at the dock without having to thaw the shark. Sharks may be eviscerated, bled, and the head removed from the carcass at sea. These measures should prevent any excessive amounts of waste at the dock, since dressing the shark (except removing the fins) can be performed while at sea. While this will result in some changes to the way fishermen process sharks at sea, the transfer of shark product to dealers could remain relatively unchanged because the fins can be removed quickly once the shark has been offloaded. NMFS expects that the market will continue to receive sharks in their log form. While there may be some changes in the way sharks are marketed and priced, it is unlikely that the total ex-vessel value of sharks will change significantly due to the requirement to land sharks with their fins attached.

#### *Description and Estimate of the Number of Small Entities to Which the Final Rule Would Apply*

NMFS considers all HMS commercial permit holders to be small entities because they either had average annual receipts less than \$4.0 million for fish-harvesting, average annual receipts less than \$6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors (5 U.S.C. 604(a)(3)). These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in this industry. A full description of the fisheries affected and the categories and number of permit holders can be found in Amendment 2 to the Consolidated HMS FMP.

The final rule would apply to the 527 commercial shark permit holders in the Atlantic shark fishery based on an analysis of permit holders on October 1, 2007. Of these permit holders, 231 have directed shark permits and 296 hold incidental shark permits. Not all permit holders are active in the fishery in any given year. NMFS estimates that there are 143 vessels with directed shark permits and 155 vessels with shark incidental permits that could be considered actively engaged in fishing,

since they reported landing at least one shark in the Coastal Fisheries Logbook from 2003 to 2005.

In addition, the reporting requirements in the final alternatives would also apply to Federal shark dealers. As of October 1, 2007, there were a total of 269 Atlantic shark dealer permit holders. Based on NMFS' understanding of HMS dealer operations, NMFS assumes that each of these dealers would be considered a small business entity with 100 or fewer employees.

The final measures being considered may also impact the types of services HMS CHB permit holders may provide. As of October 1, 2007, there were 4,899 HMS CHB permit holders. It is unknown what portion of these permit holders actively participate in shark fishing or market shark fishing services for recreational anglers.

In addition, some businesses, such as marinas or specialized tournament organizers that hold tournaments may be considered small entities. HMS tournaments are required to register with NMFS. As such, NMFS has estimates on the number of HMS tournaments. However, NMFS may not necessarily know the number of businesses behind the tournament name and contact. Tournaments offering prize categories for sharks may also experience negative economic impacts as a result of NMFS prohibiting two additional species of sharks for retention in recreational fisheries in alternative suites 2 through 4, as well as alternative suite 5 which would allow no possession of any sharks and only allow catch and release fishing. The majority of tournaments specializing in sharks are in the North Atlantic region, specifically Rhode Island, New York, and Massachusetts. In 2007, there were 59 tournaments with prize categories for pelagic sharks and 42 (combined) tournaments for LCS and SCS.

*Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule, Including an Estimate of the Classes of Small Entities Which Would Be Subject to the Requirements of the Report or Record*

The final action requires modifying existing reporting and recordkeeping requirements (5 U.S.C. 604(a)(4)). The research program component in this final rule requires modifications to the existing EFP program and dealer reporting requirements.

The final action modifies the reporting frequency for dealers. The current requirement for dealer reports to be post-marked within 10 days after

each reporting period (1<sup>st</sup> through 15<sup>th</sup> and 16<sup>th</sup> through last day of month), would be modified to state that dealer reports must be received by NMFS not later than 10 days after each reporting period (i.e., 25<sup>th</sup> and 10<sup>th</sup> of each month). Shark, swordfish, and tuna dealers would have to submit these reports in advance of the 10<sup>th</sup> and 25<sup>th</sup> of each month to ensure adequate time for delivery, depending on the means employed for report submission. Requiring that all dealer reports are actually received by NMFS in a more timely fashion would provide more frequent reports of shark landings in order to better assess quantities of sharks landed and whether or not a closure or other management measure is warranted to prevent overfishing. Dealers would still be required to submit reports indicating that no sharks were purchased during inactive periods. NMFS also intends to add a check box to the dealer form for dealers to note whether sharks were landed with fins naturally attached. Requirements for vessel logbooks and observer coverage would remain unchanged. Additional burden is not expected as a result of modifying the regulations to ensure that dealer reports are actually received within 10 days.

The final rule would also create a limited shark research program that would result in changes to existing reporting requirements. Entry into the shark research program would require vessels to submit an application, which would add to the reporting burden for those vessels wishing to apply. Applicants selected to participate in the shark research program under this alternative would also be subject to 100 percent observer coverage as a requirement for eligibility to participate in the program. In addition, selected vessels would continue to report in their normal logbook in addition to the observer program. Vessels in the shark research program, however, would not need to report in the same way as other EFP holders even though they are being issued permits under the EFP program. For example, vessels in the research fishery would not be required to submit interim or annual reports describing their fishing activities. Rather, they would only be required to submit their logbooks per current regulations. Vessels outside the shark research program would still be required to carry an observer if selected and all vessels would still be required to complete logbooks within 48 hours of fishing activity and then submit the logbooks to NMFS within seven days.

*Description of the Steps NMFS Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and the Reason That Each One of the Other Significant Alternatives to the Rule Considered by NMFS Which Affect Small Entities Was Rejected*

One of the requirements of a FRFA is to describe any alternatives to the proposed rule which would accomplish the stated objectives and which minimize any significant economic impacts (5 U.S.C. 604(a)(5)). Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)-(4)) lists four general categories of "significant" alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and,
4. Exemptions from coverage of the rule for small entities.

In order to meet the objectives of this final rule, consistent with the Magnuson-Stevens Act and the Endangered Species Act (ESA), NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, because NMFS considers all HMS permit holders to be small entities, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed seven different alternatives in this rulemaking and provides justification for selection of the final action to achieve the desired objective.

The alternatives considered and analyzed have been grouped into five alternative suites. Alternative suite 1 would maintain the current Atlantic shark fishery (no action). Alternative suite 2 would allow only directed shark

permit holders to land sharks. Alternative suite 3 would allow directed and incidental shark permit holders to land sandbar and non sandbar LCS as well as SCS and pelagic sharks. Alternative suite 4 would establish a program where vessels with directed or incidental shark permits could participate in a research fishery for sandbar sharks. Only vessels participating in this program could land sandbar sharks. Vessels not participating in the research program could land non-sandbar LCS, SCS, and pelagic sharks. Finally, alternative suite 5 would shut down the commercial Atlantic shark fishery and only allow a catch and release recreational shark fishery. The preferred alternative is suite 4, which would establish a program where a limited number of vessels with directed or incidental shark permits could participate in a research fishery for sharks dependent on the research needs of NMFS.

#### 1. *Alternative Suite 1*

Alternative suite 1, the status quo alternative, would not impose any significant new economic impacts to small businesses in the HMS Atlantic shark fishery because under this alternative the current LCS quota of 1,017 mt dw, in conjunction with the 4,000 lb LCS directed shark permit trip limit, would be maintained. Under this alternative, the current fishing effort would not likely change which could lead to economic benefits from reduced market uncertainty for fishermen and related businesses in the short term. If gross revenues for directed and incidental permit holders is averaged across the approximately 298 active directed and incidental shark permit holders, then the average annual gross revenues per shark fishing vessel is just over \$20,000. However, long term, negative economic impacts could occur if current fishing mortality of sandbar sharks, an economically important species, is not decreased as recommended by the LCS stock assessment, and this species continues to be overfished.

The status quo alternative would maintain the existing closures and would not add any new closures. The three management regions would also remain unchanged. There would also be no additional reporting requirements. Alternative suite 1 would also maintain the trimester seasons, which provides fishermen and dealers with more open seasons. With an annual LCS quota of 1,017 mt dw, spreading the seasons out over the calendar year could potentially result in greater economic stability for fishermen and associated communities.

However, if quotas are reduced to those in the final action to comply with the recommendations from the LCS stock assessment, while also maintaining the trimester seasons under status quo, trimester seasons could become less economically stable for fishermen and dealers because of the reduced amount of quota and fishing effort during the calendar year. Maintaining existing closures, reporting requirements, and management regions would likely have little to no economic impacts on effected small businesses.

Alternative suite 1 would also maintain the current bag limit for HMS Angling permit holders at one shark greater than 54 inches per vessel per trip as well as one sharpnose and one bonnethead shark (both of which are in the SCS complex) per person per trip. This would likely result in no new economic impacts for businesses operating recreational fishing charter trips targeting sharks and shark fishing tournaments in the short term.

Overall, alternative suite 1 would likely have the lowest economic impact on small businesses. However, this alternative would likely not meet the objectives of this action. Maintaining the LCS quota of 1,017 mt dw would be inconsistent with the Magnuson-Stevens Act and the recent LCS stock assessment that recommended a TAC of 158.3 mt dw for sandbar sharks for this species to rebuild by 2070. Current fishing effort, under the status quo alternative, would lead to continued overfishing of sandbar, porbeagle and dusky sharks, which could potentially prevent these species from rebuilding in the recommended timeframe. As a result, this alternative was not selected.

#### 2. *Alternative Suite 2*

Alternative suite 2 would allow only directed shark permit holders to land sharks. In addition, this alternative would remove sandbar sharks from the LCS complex and establish a separate category for sandbar sharks from the LCS complex. The quotas for landing sandbar and non-sandbar LCS would also be reduced. Incidental shark permit holders would not be permitted to land sharks under alternative suite 2. As of 2007, there were 231 directed shark permit holders, 296 incidental shark permit holders, and 269 shark dealer permit holders. One hundred forty-three vessels with directed shark permits and 155 vessels with shark incidental permits reported landing at least one shark in the Coastal Fisheries Logbook from 2003 to 2005 and could be considered active.

Data on gross annual revenues indicate that implementation of

alternative suite 2 would result in a significant reduction in revenue for directed permit holders. On average, directed permit holders landed 1,286,447 lb dw of sandbar sharks and 1,498,111 lb dw of non-sandbar LCS from 2003 to 2005 based on Federal and state shark dealer reports (landings by permit type were based on percentage of total landings by permit type in the Coastal Fisheries and HMS logbooks). In 2006 ex-vessel prices, this is equivalent to gross revenues of \$4,702,031 (assuming 5 percent of the landings are fins and 95 percent of the landings are carcass weight). If gross revenues for directed permit holders are averaged across the approximately 143 active directed shark permit holders, then the average annual gross revenues per shark fishing vessel is just under \$33,000 from shark revenues. Under alternative suite 2, gross revenues for directed permit holders would be estimated to be \$1,333,417. This is a 72-percent overall reduction in gross revenues compared to the period from 2003 to 2005. These reduced gross revenues averaged across the 143 active directed permit holders are just over \$9,000 per directed shark fishing vessel. This estimated reduction in revenue from shark landings could affect the profitability and even viability of some marginal shark fishery operations. Operations that have permits in other fisheries and can easily diversify are less likely to be as affected as those marginal operations. Nevertheless, the profitability of all directed shark fishing vessels would likely be reduced. Because the states of Florida, New Jersey, and North Carolina have the most directed shark permits, these states would be most negatively impacted by alternative suite 2.

Directed shark permit holders using PLL gear would also see reduction of revenues under alternative suite 2 because retention of sandbar sharks on PLL gear would be prohibited. On average, 80,825 lb dw of sandbar sharks were reported landed on PLL gear by directed shark permit holders from 2003 to 2005 (HMS logbook data). In 2006 ex-vessel prices, this is equivalent to \$117,510 in gross revenues. Given an average of 16.7 vessels landing sandbar sharks with PLL gear from 2003 to 2005, prohibition of sandbar sharks on PLL gear could result in a loss of gross revenues of \$7,037 per vessel.

Data on the reduction of per trip revenues also show a decline in revenue for directed permit holders. Under alternative suite 2, directed permit holders would be limited to 8 sandbar sharks per trip and 21 non-sandbar LCS per trip. In comparison, data indicate that under status quo, which has a 4,000

lb dw LCS trip limit, the average number of sandbars and non-sandbar LCS landed per trip is 35 sandbars and 32 non-sandbar LCS for all gear types reported in the Coastal Fisheries and HMS Logbooks. Based on 2006 ex-vessel prices, this is equivalent to \$4,101 per trip. Revenue estimates on a regional trip basis of the status quo alternative were also based on species composition data attained from the BLL observer program data. Observer data indicate that between 2005 and 2006, 69 sandbar sharks and 35 non-sandbar LCS were caught per trip in the South Atlantic region, and 30 sandbar sharks and 83 non-sandbar LCS were caught per trip in the Gulf of Mexico region. Based on these numbers and 2006 ex-vessel prices, revenues from South Atlantic trips are currently averaged at \$4,743/trip and Gulf of Mexico trip revenues averaged \$4,101 per trip.

Thus, given that the retention limits under alternative suite 2 (8 sandbars/trip and 21 non-sandbar LCS/trip), the average revenue per trip is estimated to decrease. The reduced non-sandbar LCS retention limit of 21 sharks per trip is based on the average ratio of sandbars to non-sandbar LCS caught in the South Atlantic and Gulf of Mexico regions to limit sandbar shark discards by fishermen deploying non-selective gear. In the Gulf of Mexico, the ratio of sandbars to other LCS caught is 1:4 which, based on an 8 sandbar per trip retention limit, would equal 32 non-sandbar LCS per trip. However, such a high non-sandbar LCS retention limit would result in sandbar discards in the South Atlantic (approximately 65.3 mt dw). Therefore, a 21 non-sandbar LCS/trip retention limit was set to balance discards versus catch in the two regions. This results in approximately 5 sandbar sharks being caught in the Gulf of Mexico region when the non-sandbar LCS retention limit/trip is filled (and therefore, only 86.1 mt dw of the sandbar quota would be filled). Therefore, gross revenues on a trip basis are estimated to be \$1,262 per trip in the South Atlantic and \$1,333 per trip in the Gulf of Mexico. From 2003 to 2005, there were 124 vessels that averaged more than 324 lb dw (or 8 sandbar sharks) of sandbar/trip.

Incidental permit holders would also experience revenue declines under alternative suite 2 because they would be prohibited from landing sharks. On average, 66 incidental permit holders landed 12,994 lb dw per year of sandbar sharks and 46,333 lb dw per year of non-sandbar LCS from 2003 to 2005 based on Federal and state shark dealer reports and Coastal Fisheries and HMS logbook data. Using 2006 ex-vessel

prices, this is equivalent to gross revenues of \$106,491 (assuming 5 percent of the landings are fins and 95 percent of the landings are carcass weight). Gross revenues averaged across the 66 vessels with incidental permits landing sharks were \$1,614 per vessel. Since incidental permit holders would not be able to land any sharks under alternative suite 2, the 66 active vessels would be most negatively affected by this alternative suite. The states of Florida, Louisiana, New Jersey, and North Carolina had the most incidental shark permit holders as of 2007 (144, 37, 20, and 16, respectively).

Alternative suite 2 would also require dealers to submit reports within 24 hours of shark products being purchased. There could be negative economic impacts to Atlantic shark dealers as a result of the increased reporting requirement associated with this alternative. Currently, shark dealer reports are required to submit bimonthly reports, regardless of whether the dealer actually purchased any shark products. Reporting frequency would be increased to 24 hours of when shark products were purchased. While the increased reporting burden would not result in direct costs to the shark dealer, it would result in additional time spent submitting dealer reports. This represents an opportunity cost for dealers since that time could have been spent conducting other activities related to their business. Furthermore, since submitting the reports via regular mail would no longer be feasible, in order to comply with the requirement that dealer reports must be received by NMFS within 24 hours, it is assumed that dealers would have to submit dealer reports electronically or via facsimile. Dealers that do not currently possess a computer or fax machine would have to purchase one of these items. The increased reporting burden implemented in this alternative suite would be subject to approval under the PRA. Reporting requirements for shark vessel permit holders, including the need to carry an observer if selected and the need to submit vessel logbooks within seven days of completing a fishing trip would not be modified, resulting in neutral economic impacts.

The other provisions of alternative suite 2 are the same as in alternative suite 4, which is the final action for this rulemaking. These provisions include: maintaining the 60 mt shark display and research quota; placement of porbeagle sharks on the prohibited list; quota carryover limited to 50 percent of base quota for species not overfished; no carryover for overfished, overfishing or unknown species; sharks fins must

remain on the shark; removal of regions and seasons; and limiting the shark species that can be landed recreationally. The effects of these provisions are set forth in the discussion of alternative suite 4.

This alternative suite was not selected for two primary reasons. First, this alternative does not address the impacts of continuing to catch sandbar sharks incidentally. These vessels will likely continue to incidentally catch sandbar sharks but then, under this alternative, those sharks would be required to be discarded. These discards would reduce potential revenues and possibly operating efficiency of vessels possessing incidental shark permits. Regulatory discards would likely lead to increases in mortality and slow efforts to end overfishing. Second, the 24 hour dealer reporting that would be required to effectively manage quotas would result in a significant increase in reporting burden for dealers. This alternative would therefore not minimize the economic cost to dealers in comparison to the preferred alternative.

### 3. Alternative Suite 3

Under alternative suite 3, the quotas for landing sandbar and non-sandbar LCS would also be reduced to the same level as that in alternative suite 2. However, because alternative suite 3 would allow directed and incidental shark permit holders to land sandbar and non-sandbar LCS as well as SCS and pelagic sharks, the available sandbar and non-sandbar LCS quota would be spread over a larger universe of commercial permit holders. Unlike the status quo or alternative suite 2, the retention limits for sandbar sharks and non-sandbar LCS would be the same for both directed and incidental permit holders. Since directed permit holders presumably make a greater percentage of their gross revenues from shark landings, they are expected to have larger negative socioeconomic impacts compared to incidental permit holders. (Revenues for incidental permit holders are actually expected to increase under this alternative.) The states of Florida, New Jersey, and North Carolina have the most directed permit holders. As with alternative suite 2, shark dealers could also experience negative impacts due to the reduction in the sandbar and other LCS quotas and retention limits, which would reduce the overall amount of sharks being landed.

As stated under alternative suite 2, on average, directed permit holders landed 1,286,447 lb dw of sandbar sharks per year and 1,498,111 of non-sandbar LCS per year from 2003 to 2005 based on

Federal and state shark dealer reports and logbook data. In 2006 ex-vessel prices, this is equivalent to gross revenues of \$4,702,031 (assuming 5 percent of the landings are fins and 95 percent of the landings are carcass weight). However, under alternative 3, the available sandbar and non-sandbar LCS quota would be spread over directed and incidental permit holders. Based on the retention limit of 4 sandbar sharks and 10 non-sandbar LCS per vessel per trip, it is estimated that 105.9 mt dw (233,467 lb dw) of the sandbar quota and 229.2 mt dw (505,294 lb dw) of the non-sandbar LCS quota could be landed under alternative suite 3. Logbook data from 2003 and 2005 showed that directed permit holders take, on average, 1,108 trips per year; the total number of shark trips taken by all permit holders was 1,143 trips. Thus, directed permit holders exhibited approximately 78 percent of the total fishing effort for sharks from 2003-2005. Based on this past effort, NMFS estimates that of the total sandbar and non-sandbar LCS quotas, approximately 83 mt dw (183,073 lb dw) of sandbar quota and 180 mt dw (396,225 lb dw) of the non-sandbar LCS quota would be harvested by directed permit holders. Based on 2006 ex-vessel prices, this is equivalent to \$1,015,162 gross revenues for directed permit holders. These gross revenues indicate a 78 percent overall reduction compared to the period from 2003 to 2005 (gross revenues based on current directed permit holders' landings were \$4,702,031). Again, the states of Florida, New Jersey, and North Carolina have the most directed permit holders.

The data indicate that directed shark permit holders would experience a loss in revenue under alternative suite 3 greater than under alternative suite 2, given that the available quota is shared with incidental permit holders under alternative suite 3. As stated in alternative 2, the status quo revenue was based on a 4,000 lb dw LCS trip limit for directed shark permit holders with average gross revenues in the South Atlantic of \$4,743 per trip and average gross revenues in the Gulf of Mexico of \$5,853 per trip. Under alternative suite 3, the retention limits would be 4 sandbars per trip and 10 non-sandbar LCS per trip. However, since the ratio of sandbars to non-sandbar LCS caught in the Gulf of Mexico is 1:4, NMFS estimates that approximately 3 sandbar sharks would be caught in the Gulf of Mexico region when the 10 non-sandbar LCS retention limit/trip is filled (10 non-sandbar LCS / 4 = 2.5 sandbar sharks). Therefore, gross revenues on a

trip basis are estimated to be \$610 per trip in the South Atlantic and \$670 per trip in the Gulf of Mexico. From 2003 to 2005, there were 128 vessels that averaged more than 163 lb dw (or 4 sandbar sharks) of sandbar/trip. Therefore, these vessels would be most negatively affected by retention limits under alternative suite 3.

The revenue of incidental shark permit holders is expected to increase under alternative suite 3. On average, incidental permit holders landed 12,994 lb dw of sandbar sharks and 46,333 lb dw of non-sandbar LCS based on Federal and state shark dealer reports and logbook data. In 2006 ex-vessel prices, this is equivalent to gross revenues of \$106,491 (assuming 5 percent of the landings are fins and 95 percent of the landings are carcass weight). The available sandbar and non-sandbar LCS quotas would be averaged over directed and incidental permit holders under alternative suite 3. Based on past effort, it was assumed 305 trips could be made by incidental permit holders. This is 22 percent of the expected fishing effort. Therefore, given the 105.9 mt dw (233,467 lb dw) of the sandbar quota and 229.2 mt dw (505,294 lb dw) of the non-sandbar LCS quota that could be landed under alternative suite 3, approximately 23 mt dw (50,395 lb dw) of sandbar quota and 50 mt dw (109,069 lb dw) of the non-sandbar LCS quota are anticipated to be landed by incidental permit holders. Based on 2006 ex-vessel prices, this is equivalent to \$279,441 gross revenues for incidental permit holders. This would result in gross revenues that are 2.7 times higher compared to 2003 to 2005 (gross revenues based on current incidental permit holders' landings were \$106,491).

This increase in gross revenues is due to the increase in retention limits for incidental permit holders. Under the status quo, incidental permit holders can retain 5 sharks from the LCS complex. However, under alternative suite 3, incidental permit holders would be able to retain 4 sandbars and 10 non-sandbar LCS or 14 LCS total. This retention limit is almost 3 times higher than what is currently allowed under the status quo. On average, incidental permit holders have been landing 2 sandbar sharks and 3 non-sandbar LCS per trip. Based on 2006 ex-vessel prices, this is equivalent to \$307 per trip. However, under alternative suite 3, incidental permit holders would make equivalent gross revenues per trip as directed permit holders: \$610 per trip in the South Atlantic and \$670 per trip in the Gulf of Mexico. This would result in gross revenues for incidental permit

holders that are 2 to 3 times higher than gross revenues in 2003 to 2005 depending on future fishing effort and catch composition. Therefore, there would be positive economic impacts for incidental permit holders under alternative suite 3. Since approximately 66 vessels with incidental permit holders landed sandbar sharks or non-sandbar LCS in 2003 to 2005 in the Coastal Fisheries and HMS Logbooks, these 66 vessels would have the largest economic benefits under alternative suite 3. However, if sharks become profitable for incidental permit holders under alternative suite 3, then more vessels with incidental permits may actively land sandbars and non-sandbar LCS in the future. Finally, the states of Florida, Louisiana, New Jersey, and North Carolina had the most incidental shark permit holders in 2007. Therefore, these states would see the largest socioeconomic benefits for incidental permit holders under alternative suite 3.

The other provisions of alternative suite 3 are the same as alternative suite 4, which is the final action for this rulemaking. These provisions include maintaining the 60 mt shark display and research quota; placement of porbeagle sharks on the prohibited list; quota carryover limited to 50 percent of base quota for species not overfished; no carryover for overfished, overfishing or unknown species; sharks fins must remain on the shark; dealer reports received within 10 days of purchase; removal of regions and seasons; and limiting the shark species that can be landed recreationally.

This alternative suite was not selected as the preferred alternative primarily based on its failure to achieve the ecological objectives of this rule and its economic impacts. Despite the time/area closures, alternative suite 3 would have a smaller reduction in dead discards of dusky sharks compared to alternative suite 2 since sandbar sharks would be allowed to be retained on PLL gear under alternative suite 3.

Negative economic impacts under alternative suite 3 are expected for directed permit holders (78-percent reduction in gross revenues compared to the status quo) as a result of the four sandbar per vessel per trip retention limit. Given that retention limits for sandbar and non-sandbar LCS are significantly lower than the limit under the status quo (91 and 69-percent reduction in sandbar and non-sandbar LCS retention limits, respectively, for directed permit holders), it is anticipated that there would be no directed shark fishery as a result of alternative suite 3. While an observer program would still operate under

alternative suite 3, without a directed shark fishery, it is anticipated that the fishery dependent data collection would be limited, which could compromise data collection for future stock assessments. Alternative suite 4 should accomplish the necessary reductions in quota, retention limits, and fishing effort to prevent overfishing and allow stocks to rebuild while collecting valuable scientific data for NMFS. Therefore, due to concerns over dusky discards, quota monitoring, and data collection, NMFS is not implementing alternative suite 3 at this time.

#### 4. Alternative Suite 4

Alternative suite 4, the final action, establishes a program where vessels with directed or incidental shark permits could participate in a small research fishery for sandbar sharks that would harvest the entire 116.6 mt dw sandbar quota. There would be 100 percent observer coverage on each research vessel, and only vessels participating in this program could land sandbar sharks. Vessels not participating in the research program could land non-sandbar LCS, SCS, and pelagic sharks.

Alternative suite 4 was selected because it meets the objectives of this rulemaking while minimizing some of the economic impacts. Those objectives include: implement rebuilding plans for sandbar, dusky, and porbeagle sharks; provide an opportunity for the sustainable harvest of blacktip sharks and other sharks, as appropriate; prevent overfishing of Atlantic sharks; analyze BLL time/area closures and take necessary action, as appropriate; and improve, to the extent practicable, data collections or data collection programs. As detailed in the economic analysis in chapters 4 and 6 of Amendment 2 to the Consolidated HMS FMP, it is estimated that vessels in the shark research fishery could make \$437,963 in gross revenues of sandbar and non-sandbar LCS landings under the adjusted quota. Since 5 to 10 vessels are anticipated to participate in the research fishery, NMFS estimates that an individual vessel could make between \$87,593 (i.e., 5 boats) to \$43,796 (i.e., 10 boats) in gross revenues on sandbar shark and non-sandbar LCS landings. However, the vessels operating outside of the research fishery would have an adjusted regional non-sandbar LCS base quota of 187.8 mt dw in the Atlantic region and 390.5 mt dw in the Gulf of Mexico region. In 2006 ex-vessel prices, this is equivalent to \$516,285 in the Atlantic region and \$1,273,269 in gross revenues in the Gulf of Mexico region. Divided by the remaining vessels it is estimated that

the average gross revenues from shark per vessel would be just over \$2,000 per trip.

In addition, under the final action, porbeagle sharks would be authorized in recreational and commercial fisheries, but under a reduced TAC of 11.3 mt dw. Of the TAC, 1.7 mt dw would be available for harvest in commercial fisheries. Currently, the commercial quota for porbeagle sharks is 92 mt dw per year, however, this commercial quota has never been met. NMFS set new TAC and commercial quotas for porbeagle sharks based on present effort levels. Based on quota monitoring (which includes vessel trip reports) from 2003 to 2006, on average, 3,867 lb dw (1.7 mt dw) of porbeagle sharks were landed per year. Based on 2006 ex-vessel prices, this is equivalent to \$7,378 in gross revenues. Since commercial fishermen would be allowed to continue to land porbeagle sharks at this level, there are no anticipated economic impacts of implementing the TAC. In addition, recreational anglers would still be allowed to land porbeagle sharks. Therefore, there are no negative economic impacts for recreational fishermen associated with the TAC.

Data indicate that the preferred alternative maintains the annual gross revenues per vessel for vessels operating in the research fishery, while allowing other vessels outside of the research fishery to generate revenues at reduced levels. For example, in the no action alternative, it was estimated that if gross revenues for directed and incidental permit holders are averaged across the approximately 296 active directed and incidental shark permit holders, then the average annual gross revenues per shark fishing vessel is just over \$20,000. Using the average landings for directed permit holder from 2003 to 2005, it is estimated that the 143 active directed permit holders generated average annual gross shark revenues of just under \$33,000 from sharks. Under alternative 2, the reduced gross revenues averaged across the 143 active directed permit holders are estimated to be just over \$9,000 per directed shark fishing vessel and \$1,221 per vessel per year for incidental permit holders that land sharks. Under alternative 3 this is reduced further to approximately \$7,000 (\$1,015,162 gross revenues/143 vessel) per directed shark fishing vessel per year.

Alternative suite 4 has less economic impact on shark fishermen than alternative suite 5 (discussed below), but has greater impacts in the short-run than the status quo alternative. By allowing a limited number of historical

participants to continue to harvest sharks under the research fishery, NMFS ensures that data for stock assessments and life history samples would continue to be collected. After comparing the alternative suites, NMFS determined that alternative suite 4 is the alternative that best meets the objectives of this rule while minimizing the economic impacts to shark permit holders.

#### 5. Alternative Suite 5

Alternative suite 5 would have significant economic and social impacts on a variety of small entities, including: commercial shark permit holders, shark dealers, CHB and tournament operators, gear manufacturers, bait and ice suppliers, and other secondary industries dependent on the shark fishery. The level of economic impact would be directly proportional to the amount of revenues that each entity has realized from past participation in the shark fishery. Permit holders would be impacted differently depending on the quantity of sharks landed in the past.

Vessels targeting sharks (directed permit holders) landed an average of 1,263 mt dw of LCS, 223 mt dw SCS, and 173 mt dw pelagic sharks per year between 2003 to 2005 based on shark dealer landings and effort data from the Coastal Fisheries and HMS logbooks. The gross revenues based on 2006 ex-vessel prices of these landings are estimated at \$4,702,031, \$681,880, and \$764,512 for LCS, SCS, and pelagic sharks, respectively. While it is assumed that few directed shark permit holders subsist entirely on revenues attained from the shark fishery, impacts would still be severe for those participants that depend on income from the directed shark fishery at certain times of the year. Because of the extensive economic impacts to shark directed permit holders as a result of this alternative suite, it is assumed that directed permit holders would likely pursue one of the following options as a result of closing the Atlantic shark fishery: (1) transfer fishing effort to other fisheries for which they are already permitted (snapper grouper, king and Spanish mackerel, tilefish, lobster, dolphin/wahoo, etc), (2) acquire the necessary permits to participate in other fisheries (both open access and/or limited access fisheries), or (3) relinquish all permits and leave the fishing industry.

Incidental permit holders would face negative economic and social impacts as a result of closing the Atlantic shark fishery; however, these impacts would not be as severe as those experienced by directed permit holders. It is assumed that incidental permit holders receive

the majority of their fishing income from participation in other fisheries, depending on the region and the type of gear predominantly fished (i.e., swordfish, tunas, snapper grouper, tilefish, dolphin/wahoo, lobster, etc.). NMFS estimates that, on average, between 2003 and 2005 incidental permit holders landed 26.9 mt dw LCS, 17.3 mt dw SCS, and 45.5 mt dw pelagics per year based on shark dealer landings and effort data from the Coastal Fisheries and HMS logbooks. This equates in gross revenues, based on 2006 ex-vessel prices for these landings, of \$106,491, \$52,882, and \$201,061 for the respective species complexes. Incidental permit holders would likely have to increase effort in these other fisheries to replace lost revenues from landing sharks. Furthermore, these vessels may seek other permits (open access or limited access transferred from another vessel) or leave the fishing industry entirely.

This alternative suite could also have negative economic and social impacts for shark dealers as they would no longer be authorized to purchase shark products from Federally permitted shark fishermen. Shark dealers also maintain permits to purchase other regionally caught fish products. Due to the brevity of the LCS shark fishing season, which is the shark fishery that accounts for the majority of the shark product revenue due to the fin value, many dealers also get revenue from purchasing fish products other than sharks. The majority of shark dealer permit holders hold permits to purchase other fish products, including swordfish, tunas, snapper grouper, tilefish, mackerel, lobster, and dolphin/wahoo among others. It is difficult to estimate, on an individual dealer basis, the percentage of revenues received exclusively from shark products.

Shark fin dealers, specializing in the purchase of shark fins from Federal and state permitted dealers, would also experience negative social and economic impacts as a result of closing the shark fishery. These dealers receive virtually all of their income from purchasing shark fins and shipping them to exporters. Exporters then transport the fins to global and domestic markets. This alternative suite would likely force shark fin dealers to leave the industry or focus on purchasing other fishery products, resulting in significant economic impacts to the individuals involved in this trade.

It is difficult to estimate the economic and social impacts that would be experienced by various small entities that support the shark fishery, e.g., purveyors of bait, ice, fishing gear, and

fishing gear manufactures. However, these impacts would likely be negative. It is difficult to estimate these impacts as it is uncertain to what extent vessels that were fishing for sharks would redistribute their fishing effort to other fisheries, or simply cease fishing operations. If the majority of vessels affected by a shark fishery closure simply displace effort to other fisheries, it is assumed that they would still be dependent on small entities for their bait, ice, and gear as these are products essential for fishing excursions targeting any species. Redistributing effort to other fisheries would mitigate negative economic impacts. However, if a significant number of vessels simply cease fishing operations or scale back considerably, then severe economic consequences would be imparted on these support industries as a result.

Reporting and observer requirements would also change under alternative suite 5. Alternative suite 5 would increase the proportion of fishermen completing the Coastal Fisheries Logbook who are then selected to report information on fish that are discarded. Currently, 20 percent of the fishermen completing this logbook are selected. This percentage would be increased to facilitate improved data available for shark interactions with longline and gillnet gear. This information would be especially useful because sharks could no longer be landed and the existing logbook only requires fishermen to provide data on landed fish. Increasing the number of fishermen who are selected to provide this data would result in negative economic and social impacts because it would require additional paperwork to be filled out. Because NMFS would close the fishery under this alternative suite, vessels would no longer be required to take an observer. Shark dealers would also no longer be required to submit dealer reports regarding sharks purchased.

Seasons and regions for the commercial Atlantic shark fishery would no longer apply as this alternative suite would close the fishery.

Closing the Atlantic recreational shark fishery would have negative economic and social impacts, particularly for CHB operators who specialize in landing sharks and operators of shark tournaments that have prize categories for landing sharks. It is difficult to estimate the number of CHB operators that specialize in shark charters as the permit covers any participant targeting swordfish, sharks, tunas, and billfish. Many CHB operators target a variety of species depending on client interests, weather, time of year, and oceanographic conditions. CHB

operators specializing in shark fishing charters would have to target other HMS or non HMS species to replace revenues lost as a result of customers not being able to land sharks. However, not all customers necessarily want to land sharks. CHB operators would still be able to catch sharks; however, all sharks (regardless of species) would need to be released in a manner that maximizes their chances of survival. Catering business operations to clientele interested in catch and release fishing for sharks might mitigate some of the negative economic impacts. Shark tournaments that reward prizes for landing sharks would be negatively impacted as a result of this alternative suite. In 2007, there were 59 tournaments with prize categories for pelagic sharks and 42 (combined) tournaments for LCS and SCS. The majority of these tournaments target pelagic sharks and are held in the North Atlantic and Gulf of Mexico regions. These tournaments would either modify their rules to only allow points/prizes for released sharks or these tournaments would cease to exist. Economic impacts on small entities such as restaurants, hotels, gear manufacturers, retail stores selling fishing supplies, and marinas in the vicinity of where these tournaments are held would also experience negative economic impacts.

HMS Angling permit holders would also experience negative impacts, despite the fact that they would still be able to catch and release sharks. Landings would not be permitted by any recreational anglers as a result of this alternative suite.

Closing the Atlantic shark fishery would have negative economic impacts on global shark fin markets. As a result of this alternative suite, U.S. flagged vessels would no longer be able to contribute to the global demand for shark fins. This would disadvantage U.S. shark fishermen as global markets would likely need to purchase their shark fins from other markets. However, the United States is not a significant producer of shark products globally. Based on data from the United Nations Food and Agriculture Organization (FAO), less than one percent of global shark landings occur in the U.S. Atlantic Ocean.

While alternative suite 5 would meet the objectives of this rule, it would have the highest negative economic impacts of the alternatives considered. There would be significant reductions in revenues for shark dealers and fishing vessels involved in the shark fishery. Some small businesses dependent on commercial shark fishing may cease operating as a result of prohibiting the

commercial harvest of shark species. Therefore, this alternative was not selected.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The Agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of the compliance guide for this final rule are available (see **ADDRESSES**).

#### List of Subjects

##### 50 CFR Part 600

Fisheries, Fishing, Fishing vessels, Foreign relations, Penalties, Reporting and recordkeeping requirements.

##### 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 16, 2008.

#### John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 600 and 635 are amended as follows:

#### Chapter VI

### PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.1203, paragraph (a)(9) is revised to read as follows:

#### § 600.1203 Prohibitions.

(a) \* \* \*

(9) Fail to maintain a shark in the form specified in §§ 600.1204(h) and 635.30(c) of this chapter.

\* \* \* \* \*

■ 3. In § 600.1204, paragraphs (h) and (j) are revised to read as follows:

#### § 600.1204 Shark finning; possession at sea and landing of shark fins.

\* \* \* \* \*

(h) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark limited access permit and who lands shark in or

from the U.S. EEZ in an Atlantic coastal port must comply with regulations found at § 635.30(c) of this chapter.

\* \* \* \* \*

(j) No person aboard a vessel that has been issued a Federal Atlantic commercial shark limited access permit shall possess on board shark fins without the fins being naturally attached to the corresponding carcass(es), although sharks may be dressed at sea.

\* \* \* \* \*

### PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 4. The authority citation for 50 CFR part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 5. In § 635.2, the definitions of "First receiver", "Naturally attached", "Non-sandbar LCS", and "Shark research permit" are added in alphabetical order and the definitions of "Dress" and "Dressed weight (dw)" are revised to read as follows:

#### § 635.2 Definitions.

\* \* \* \* \*

*Dress*, for swordfish, tunas, and billfish, means to process a fish by removal of head, viscera, and fins, but does not include removal of the backbone, halving, quartering, or otherwise further reducing the carcass. For sharks, dress means to process a fish by removal of head and viscera, but does not include removal of the fins, backbone, halving, quartering, or otherwise further reducing the carcass.

*Dressed weight (dw)*, for swordfish, tunas, and billfish, means the weight of a fish after it has been dressed. For sharks, dressed weight means the weight of a fish after it has been dressed and had its fins, including the tail, removed.

\* \* \* \* \*

*First receiver* means any entity, person, or company that takes, for commercial purposes (other than solely for transport), immediate possession of the fish, or any part of the fish, as the fish are offloaded from a fishing vessel of the United States, as defined under § 600.10 of this chapter, whose owner or operator has been issued, or should have been issued, a valid permit under this part.

\* \* \* \* \*

*Naturally attached* refers to shark fins that remain attached to the shark carcass via at least some portion of uncut skin.

\* \* \* \* \*

*Non-sandbar LCS* means one of the species, or part thereof, listed under

heading A of Table 1 in Appendix A of this part other than the sandbar shark (*Carcharhinus plumbeus*).

\* \* \* \* \*

*Shark research permit* means a permit issued to catch and land a limited number of sharks to maintain time series for stock assessments and for other scientific research purposes. These permits may be issued only to the owner of a vessel who has been issued either a directed or incidental shark LAP. The permit is specific to the commercial shark vessel and owner combination and is valid only per the terms and conditions listed on the permit.

\* \* \* \* \*

■ 6. In § 635.4, paragraphs (a)(5) and (g)(2) are revised to read as follows:

#### § 635.4 Permits and fees.

\* \* \* \* \*

(a) \* \* \*

(5) *Display upon offloading*. Upon offloading of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's HMS Charter/Headboat permit; Atlantic tunas, shark, or swordfish permit; and/or the shark research permit to the first receiver. The permit(s) must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2), and (b)(2)(i).

\* \* \* \* \*

(g) \* \* \*

(2) *Shark*. A first receiver, as defined in § 635.2, of Atlantic sharks must possess a valid dealer permit.

\* \* \* \* \*

■ 7. In § 635.5, paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iv) are revised to read as follows:

#### § 635.5 Recordkeeping and reporting.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Dealers that have been issued or should have been issued an Atlantic tunas, swordfish, and/or sharks dealer permit under § 635.4 must submit to NMFS all reports required under this section. All reports must be species-specific, must include information about all HMS landed, regardless of where harvested or whether the vessel is federally permitted under § 635.4 and, for sharks, must specify the total shark fin weight separately from the weight of the shark carcass. As stated in § 635.4(a)(6), failure to comply with these recordkeeping and reporting requirements may result in the existing dealer permit being revoked, suspended, or modified, and in the denial of any permit applications.



(ii) Reports of Atlantic tunas, swordfish, and/or sharks received by dealers from U.S. vessels, as defined under § 600.10 of this chapter, on the first through the 15<sup>th</sup> of each month, must be received by NMFS not later than the 25<sup>th</sup> of that month. Reports of Atlantic tunas, swordfish, and/or sharks received on the 16<sup>th</sup> through the last day of each month must be received by NMFS not later than the 10<sup>th</sup> of the following month. If a dealer issued an Atlantic tunas, swordfish, or sharks dealer permit under § 635.4 has not received any Atlantic HMS from U.S. vessels during a reporting period as specified in this section, he or she must still submit the report required under paragraph (b)(1)(i) of this section stating that no Atlantic HMS were received. This negative report must be received by NMFS for the applicable reporting period as specified in this section. This negative reporting requirement does not apply for bluefin tuna.

(iv) The dealer may mail or fax such report to an address designated by NMFS or may hand-deliver such report to a state or Federal fishery port agent designated by NMFS. If the dealer hand-delivers the report to a port agent, the dealer must deliver such report for Atlantic tunas, swordfish, or sharks no later than the prescribed received-by date for the reporting period, as required in paragraphs (b)(1)(i) and (ii) of this section.

■ 8. In § 635.21, paragraphs (d)(1)(i), (d)(1)(ii), and (d)(3)(ii) are revised, and paragraph (d)(1)(iii) is added to read as follows:

**§ 635.21 Gear operation and deployment restrictions.**

- (d) \* \* \*
- (1) \* \* \*
- (i) The mid-Atlantic shark closed area from January 1 through July 31 each calendar year;
- (ii) The areas designated at § 622.33(a)(1) through (3) of this chapter, year-round; and
- (iii) The areas described in paragraphs (d)(1)(iii)(A) through (H) of this section, year-round.

(A) *Snowy Grouper Wreck*. Bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	33°25'	77°04.75'
B	33°34.75'	76°51.3'
C	33°25.5'	76°46.5'

Point	North lat.	West long.
D	33°15.75'	77°00.0'
A	33°25'	77°04.75'

(B) *South Carolina A*. Bounded on the north by 32°53.5' N. lat.; on the south by 32°48.5' N. lat.; on the east by 78°04.75' W. long.; and on the west by 78°16.75' W. long.

(C) *Edisto*. Bounded on the north by 32°24' N. lat.; on the south by 32°18.5' N. lat.; on the east by 78°54.0' W. long.; and on the west by 79°06.0' W. long.

(D) *Charleston Deep Artificial Reef*. Bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	32°04'	79°12'
B	32°08.5'	79°07.5'
C	32°06'	79°05'
D	32°01.5'	79°09.3'
A	32°04'	79°12'

(E) *Georgia*. Bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	31°43'	79°31'
B	31°43'	79°21'
C	31°34'	79°29'
D	31°34'	79°39'
A	31°43'	79°31'

(F) *North Florida*. Bounded on the north by 30°29' N. lat.; on the south by 30°19' N. lat.; on the east by 80°02' W. long.; and on the west by 80°14' W. long.

(G) *St. Lucie Hump*. Bounded on the north by 27°08' N. lat.; on the south by 27°04' N. lat.; on the east by 79°58' W. long.; and on the west by 80°00' W. long.

(H) *East Hump*. Bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°36.5'	80°45.5'
B	24°32'	80°36'
C	24°27.5'	80°38.5'
D	24°32.5'	80°48'
A	24°36.5'	80°45.5'

\* \* \* \* \*

(3) \* \* \*

(ii) *Handling and release requirements*. Sea turtle bycatch mitigation gear, as required by paragraph (d)(3)(i) of this section, must be used to disengage any hooked or entangled sea turtle as stated in paragraph (c)(5)(ii) of this section. This mitigation gear should also be employed to disengage any hooked or entangled species of prohibited sharks as listed under heading D of Table 1 of Appendix A of this part, any hooked or entangled species of sharks that exceed the retention limits as specified in § 635.24(a), and any hooked or entangled smalltooth sawfish. In addition, if a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and the fish should be examined for research tags. All smalltooth sawfish must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water or any research tags from the fish.

\* \* \* \* \*

■ 9. In § 635.22, paragraph (c) is revised to read as follows:

**§ 635.22 Recreational retention limits.**

\* \* \* \* \*

(c) *Sharks*. (1) One of each of the following sharks may be retained per vessel per trip, subject to the size limits described in § 635.20(e): any of the non-ridgeback sharks listed under heading A.2 of Table 1 in Appendix A of this part, tiger (*Galeocerdo cuvieri*), blue (*Prionace glauca*), common thresher (*Alopias vulpinus*), oceanic whitetip (*Carcharhinus longimanus*), porbeagle (*Lamna nasus*), shortfin mako (*Isurus oxyrinchus*), Atlantic sharpnose (*Rhizoprionodon terraenovae*), finetooth (*C. isodon*), blacknose (*C. acronotus*), and bonnethead (*Sphyrna tiburo*).

(2) In addition to the shark listed under paragraph (c)(1) of this section, one Atlantic sharpnose shark and one bonnethead shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark and one bonnethead shark per person may be possessed on board a vessel.

(3) No prohibited sharks, including parts or pieces of prohibited sharks, which are listed in Table 1 of Appendix A to this part under prohibited sharks, may be retained regardless of where harvested.

(4) The recreational retention limit for sharks applies to any person who fishes in any manner, except to persons aboard a vessel that has been issued an Atlantic

incidental or directed shark LAP under § 635.4. If a commercial Atlantic shark quota is closed under § 635.28, the recreational retention limit for sharks and no sale provision in paragraph (a) of this section may be applied to persons aboard a vessel issued an Atlantic incidental or directed shark LAP under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit issued under § 635.4 and is engaged in a for-hire fishing trip.

\* \* \* \* \*

■ 10. In § 635.24, paragraph (a) is revised to read as follows:

**§ 635.24 Commercial retention limits for sharks and swordfish.**

\* \* \* \* \*

(a) *Sharks.* (1) A person who owns or operates a vessel that has been issued a valid shark research permit under § 635.32(f) and who has a NMFS-approved observer on board may retain, possess, or land LCS, including sandbar sharks, in excess of the retention limits in paragraphs (a)(2) through (6) of this section. The amount of LCS that can be landed by such a person will vary as specified on the shark research permit. Only a person who owns or operates a vessel issued a valid shark research permit with a NMFS-approved observer on board may retain, possess, or land sandbar sharks.

(2) From July 24, 2008 through December 31, 2012, a person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a valid shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 33 non-sandbar LCS per vessel per trip if the fishery is open per § 635.27 and § 635.28. Such persons may not retain, possess, or land sandbar sharks. As of January 1, 2013, a person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 36 non-sandbar LCS per vessel per trip if the fishery is open per § 635.27 and § 635.28. Such persons may not retain, possess, or land sandbar sharks.

(3) A person who owns or operates a vessel that has been issued an incidental LAP for sharks and does not have a valid shark research permit, or a person

who owns or operates a vessel that has been issued an incidental LAP for sharks and that has been issued a valid shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 3 non-sandbar LCS per vessel per trip if the fishery is open per § 635.27 and § 635.28. Such persons may not retain, possess, or land sandbar sharks.

(4) A person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, or land SCS and pelagic sharks if the SCS or pelagic shark fishery is open per § 635.27 and § 635.28. A person who owns or operates a vessel that has been issued an incidental LAP for sharks may retain, possess, or land no more than 16 SCS and pelagic sharks, combined, per trip, if the fishery is open per § 635.27 and § 635.28.

(5) A person who owns or operates a vessel that has been issued an incidental or directed LAP for sharks may not retain, possess, land, sell, or purchase prohibited sharks, including any parts or pieces of prohibited sharks, which are listed in Table 1 of Appendix A to this part under prohibited sharks.

(6) A person who owns or operates a vessel that has been issued either an incidental or directed LAP for sharks, and who decides to retain sharks, must retain, subject to the trip limits, all dead, legal-sized, non-prohibited sharks that are brought onboard the vessel and cannot replace those sharks with sharks of higher quality or size that are caught later in the trip. Any fish that are to be released cannot be brought onboard the vessel and must be released in the water in a manner that maximizes survival.

\* \* \* \* \*

■ 11. In § 635.27, paragraphs (b)(1) and (2) are revised to read as follows:

**§ 635.27 Quotas.**

\* \* \* \* \*

(b) \* \* \*

(1) *Commercial quotas.* The commercial quotas for sharks specified in paragraphs (b)(1)(i) through (b)(1)(vi) of this section apply to all sharks harvested from the management unit, regardless of where harvested. Sharks taken and landed from state waters, even by fishermen without Federal shark permits, must be counted against the fishery quota. Commercial quotas are specified for each of the management groups of sandbar sharks, non-sandbar LCS, SCS, blue sharks, porbeagle sharks, and pelagic sharks other than blue or porbeagle sharks. Any sharks landed as unclassified will be counted against the appropriate species' quota based on the species composition

calculated from data collected by observers on non-research trips and/or dealer data. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed under heading D of Table 1 of Appendix A to this part, may be retained except as authorized under § 635.32.

(i) *Fishing seasons.* The fishing season for sandbar sharks, non-sandbar LCS, small coastal sharks, and all pelagic sharks will begin on January 1 and end on December 31.

(ii) *Regions.* (A) The commercial quotas for non-sandbar LCS are split between two regions: the Gulf of Mexico and the Atlantic. For the purposes of this section, the boundary between the Gulf of Mexico region and the Atlantic region is defined as a line beginning on the east coast of Florida at the mainland at 25°20.4' N. lat, proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region. Any water and land to the north and east of that boundary, for the purposes of quota monitoring and setting of quotas, is considered to be within the Atlantic region.

(B) Except for non-sandbar LCS landed by a vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported by dealers located in the Florida Keys areas or in the Gulf of Mexico will be counted against the non-sandbar LCS Gulf of Mexico regional quota. Except for non-sandbar LCS landed by a vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported by dealers located in the Atlantic region will be counted against the non-sandbar LCS Atlantic regional quota. Non-sandbar LCS landed by a vessel issued a valid shark research permit with a NMFS-approved observer onboard will be counted against the non-sandbar LCS research fishery quota using scientific observer reports.

(iii) *Sandbar sharks.* The base annual commercial quota for sandbar sharks is 116.6 mt dw. However, from July 24, 2008 through December 31, 2012, to account for overharvests that occurred in 2007, the adjusted base quota is 87.9 mt dw. Both the base quota and the adjusted base quota may be further adjusted per paragraph (b)(1)(vii) of this section. This quota is available only to the owners of commercial shark vessels that have been issued a valid shark research permit and that have a NMFS-approved observer onboard.

(iv) *Non-sandbar LCS.* The total base quota for non-sandbar LCS is 677.8 mt dw. This base quota is split between the

two regions and the shark research fishery as follows: Gulf of Mexico = 439.5 mt dw; Atlantic = 188.3 mt dw; and Shark Research Fishery = 50 mt dw. However, from July 24, 2008 through December 31, 2012, to account for overharvests that occurred in 2007, the total adjusted base quota is 615.8 mt dw. This adjusted base quota is split between the regions and the shark research fishery as follows: Gulf of Mexico = 390.5 mt dw; Atlantic = 187.8 mt dw; and Shark Research Fishery = 37.5 mt dw. Both the base quota and the adjusted base quota may be further adjusted per paragraph (b)(1)(vii) of this section.

(v) *Small coastal sharks.* The base annual commercial quota for small coastal sharks is 454 mt dw, unless adjusted pursuant to paragraph (b)(1)(vii) of this section.

(vi) *Pelagic sharks.* The base annual commercial quotas for pelagic sharks are 273 mt dw for blue sharks, 1.7 mt dw for porbeagle sharks, and 488 mt dw for pelagic sharks other than blue sharks or porbeagle sharks, unless adjusted pursuant to paragraph (b)(1)(vii) of this section.

(vii) *Annual adjustments.* NMFS will publish in the **Federal Register** any annual adjustments to the base annual commercial quotas or the 2008 through 2012 adjusted base quotas. The base annual quota and the adjusted base annual quota will not be available, and the fishery will not open, until such adjustments are published and effective in the **Federal Register**.

(A) *Overharvests.* If the available quota for sandbar sharks, small coastal, porbeagle shark, and pelagic sharks other than blue or porbeagle sharks is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years. If the annual quota in a particular region or in the research fishery for non-sandbar LCS is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years, in the specific region or research fishery where the overharvest occurred. If the blue shark quota is exceeded, NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark

quota is exceeded prior to the start of the next fishing season or, depending on the level of overharvest(s), deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years.

(B) *Underharvests.* If an annual quota for sandbar sharks, SCS, blue sharks, porbeagle sharks, or pelagic sharks other than blue or porbeagle is not exceeded, NMFS may adjust the annual quota depending on the status of the stock or quota group. If the annual quota for non-sandbar LCS is not exceeded in either region or in the research fishery, NMFS may adjust the annual quota for that region or the research fishery depending on the status of the stock or quota group. If the stock (e.g., sandbar shark, porbeagle shark, pelagic shark, or blue shark) or specific species within a quota group (e.g., non-sandbar LCS or SCS) is declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS will not adjust the following fishing year's quota for any underharvest, and the following fishing year's quota will be equal to the base annual quota (or the adjusted base quota for sandbar and non-sandbar LCS until December 31, 2012). If the stock is not declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS may increase the following year's base annual quota (or the adjusted base quota for sandbar and non-sandbar LCS until December 31, 2012) by an equivalent amount of the underharvest up to 50 percent above the base annual quota. For the non-sandbar LCS fishery, underharvests are not transferable between regions and/or the research fishery.

(2) *Public display and non-specific research quota.* The base annual quota for persons who collect non-sandbar LCS, SCS, pelagic sharks, blue sharks, porbeagle sharks, or prohibited species under a display permit or EFP is 57.2 mt ww (41.2 mt dw). The base annual quota for persons who collect sandbar sharks under a display permit is 1.4 mt ww (1 mt dw) and under an EFP is 1.4 mt ww (1 mt dw). No persons may collect dusky sharks under a display permit or EFP. All sharks collected under the authority of a display permit or EFP, subject to restrictions at § 635.32, will be counted against these quotas.

\* \* \* \* \*

■ 12. In § 635.28, paragraphs (b)(1) through (3) are revised to read as follows:

**§ 635.28 Closures.**

\* \* \* \* \*

(b) \* \* \*

(1) If quota is available as specified by a publication in the **Federal Register**, the commercial fisheries for sandbar shark, non-sandbar LCS, SCS, porbeagle sharks, blue sharks, and pelagic sharks other than blue or porbeagle sharks will remain open as specified at § 635.27(b)(1).

(2) When NMFS calculates that the fishing season landings for sandbar shark, non-sandbar LCS, SCS, blue sharks, porbeagle sharks, or pelagic sharks other than blue or porbeagle sharks has reached or is projected to reach 80 percent of the available quota as specified in § 635.27(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species group and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for the shark species group and, for non-sandbar LCS, region is closed, even across fishing years.

(3) When the fishery for a shark species group and/or region is closed, a fishing vessel, issued an Atlantic Shark LAP pursuant to § 635.4, may not possess or sell a shark of that species group and/or region, except under the conditions specified in § 635.22(a) and (c) or if the vessel possesses a valid shark research permit under § 635.32 and an NMFS-approved observer is onboard. A shark dealer, issued a permit pursuant to § 635.4, may not purchase or receive a shark of that species group and/or region from a vessel issued an Atlantic Shark LAP, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Additionally, a permitted shark dealer or processor may possess non-sandbar sharks that were harvested by a vessel issued a valid shark research permit with a NMFS-approved observer onboard as long as the non-sandbar shark research fishery is open. Under a closure for a shark species group, a shark dealer, issued a permit pursuant to § 635.4 may, in accordance with state regulations, purchase or receive a shark of that species group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in state waters and that has not been issued a Shark LAP, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4. Additionally, under a closure for a shark species group and/or regional closure, a

shark dealer, issued a permit pursuant, to § 635.4 may purchase or receive a shark of that species group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel issued a valid shark research permit (per § 635.32) that had a NMFS-approved observer on board during the trip sharks were collected.

\* \* \* \* \*

■ 13. In § 635.30, paragraphs (c)(1) through (4) are revised to read as follows:

**§ 635.30 Possession at sea and landing.**

\* \* \* \* \*

(c) \* \* \*

(1) Notwithstanding the regulations issued at part 600, subpart N of this chapter, a person who owns or operates a vessel issued a Federal Atlantic commercial shark LAP must maintain all the shark fins including the tail on the shark carcass until the shark has been offloaded from the vessel. While sharks are on board and when sharks are being offloaded, persons issued a Federal Atlantic commercial shark LAP are subject to the regulations at part 600, subpart N, of this chapter.

(2) A person who owns or operates a vessel that has a valid Federal Atlantic commercial shark LAP must maintain the shark intact through offloading except that the shark may be dressed. All fins, including the tail, must remain naturally attached to the shark through offloading. While on the vessel, fins may be sliced so that the fin can be folded along the carcass for storage purposes as long as the fin remains naturally attached to the carcass via at least a small portion of uncut skin. The fins and tail may only be removed from the carcass once the shark has been landed and offloaded.

(3) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark LAP and who lands sharks in an Atlantic coastal port must have all fins and carcasses weighed and recorded on the weighout slips specified in § 635.5(a)(2) and in accordance with regulations at part 600, subpart N, of this chapter. Persons may not possess any shark fins not naturally attached to a shark carcass on board a fishing vessel at any time.

(4) Persons aboard a vessel that does not have a commercial permit for shark must maintain a shark in or from the EEZ intact through landing with the head, tail, and all fins attached. The shark may be bled.

\* \* \* \* \*

■ 14. In § 635.31, paragraphs (c)(1) and (c)(4) are revised to read as follows:

**§ 635.31 Restrictions on sale and purchase.**

\* \* \* \* \*

(c) \* \* \*

(1) Persons that own or operate a vessel that possesses a shark from the management unit may sell such shark only if the vessel has a valid commercial shark permit issued under this part. Persons may possess and sell a shark only when the fishery for that species group and/or region has not been closed, as specified in § 635.28(b).

\* \* \* \* \*

(4) Only dealers that have a valid shark dealer permit may purchase shark from the owner or operator of a fishing vessel. Dealers may purchase a shark only from an owner or operator of a vessel who has a valid commercial shark permit issued under this part, except that dealers may purchase a shark from an owner or operator of a vessel that does not have a commercial permit for shark if that vessel fishes exclusively in state waters. Dealers may purchase a sandbar shark only from an owner or operator of a vessel who has a valid shark research permit and who had a NMFS-approved observer onboard the vessel for the trip in which the sandbar shark was collected. Dealers may purchase a shark from an owner or operator of fishing vessel that has a permit issued under this part only when the fishery for that species group and/or region has not been closed, as specified in § 635.28(b).

\* \* \* \* \*

■ 15. In § 635.32, paragraphs (a)(2), (f), and (g) are revised and paragraph (h) is added to read as follows:

**§ 635.32 Specifically authorized activities.**

(a) \* \* \*

(2) Activities subject to the provisions of this section include, but are not limited to: scientific research resulting in, or likely to result in, the take, harvest, or incidental mortality of Atlantic HMS; exempted fishing and educational activities; programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks; or chartering arrangements. Such activities must be authorized in writing and are subject to all conditions specified in any letter of acknowledgment, EFP, scientific research permit, display permit, chartering permit, or shark research permit issued in response to requests for authorization under this section.

\* \* \* \* \*

(f) *Shark research permits.* (1) For activities consistent with the purposes

of this section and § 600.745(b)(1) of this chapter, NMFS may issue shark research permits.

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid shark research permit is required to fish for, take, retain, or possess Atlantic sharks, including sandbar sharks, in excess of the retention limits described in § 635.24(a). A valid shark research permit must be on board the harvesting vessel, must be available for inspection when the shark is landed, and must be presented for inspection upon request of an authorized officer. A shark research permit is only valid for the vessel and owner(s) combination specified and cannot be transferred to another vessel or owner(s). A shark research permit is only valid for the retention limits, time, area, gear specified, and other terms and conditions as listed on the permit and only when a NMFS-approved observer is onboard. Species landed under a shark research permit shall be counted against the appropriate quota specified in § 635.27 or as otherwise provided in the shark research permit.

(3) Regardless of the number of applicants, NMFS will issue only a limited number of shark research permits depending on available quotas as described in § 635.27, research needs for stock assessments and other scientific purposes, and the number of sharks expected to be harvested by vessels issued LAPs for sharks.

(4) In addition to the workshops required under § 635.8, persons issued a shark research permit, and/or operators of vessels specified on the shark research permit, may be required to attend other workshops (e.g., shark identification workshops, captain's meeting, etc.) as deemed necessary by NMFS to ensure the collection of high quality data.

(5) Issuance of a shark research permit does not guarantee the permit holder that a NMFS-approved observer will be deployed on any particular trip. Rather, permit issuance indicates that a vessel is eligible for a NMFS-approved observer to be deployed on the vessel for a particular trip and that, on such observed trips, the vessel may be allowed to harvest Atlantic sharks, including sandbar sharks, in excess of the retention limits described in § 635.24(a).

(6) The shark research permit may be revoked, limited, or modified at any time, does not confer any right to engage in activities beyond those authorized by the permit, and does not confer any right of compensation to the holder.

(g) *Applications and renewals.* (1) Application procedures shall be as

indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purpose of obtaining public comment. In such cases, NMFS may file with the Office of the Federal Register, on an annual or more frequent basis as necessary, notification of previously authorized exempted fishing, scientific research, public display, chartering, and shark research activities and to solicit public comment on anticipated EFP, scientific research permit, letter of acknowledgment, public display, chartering, or shark research permit activities. Applications for EFPs, scientific research permits, public display permits, chartering permits, or shark research permits are required to include all reports specified in the applicant's previous permit including, if applicable, the year-end report, all delinquent reports for permits issued in prior years, and all other specified information. In situations of delinquent reports, applications will be deemed incomplete and a permit will not be issued under this section.

(2) For the shark research permit, NMFS will publish annually, in a **Federal Register** notice(s), a description for the following fishing year of the expected research objectives. This description may include information such as the number of vessels needed, regions and seasons for which vessels are needed, the specific criteria for selection, and the application deadline. Complete applications, including all information requested in the applicable **Federal Register** notice(s) and on the application form and any previous reports required pursuant to this section and § 635.5, must be received by NMFS by the application deadline in order for the vessel to be considered. Requested information could include, but is not limited to, applicant name and address, permit information, vessel information, availability of the vessel, past involvement in the shark fishery, and compliance with HMS regulations including observer regulations. NMFS will only review complete applications received by the published deadline to determine eligibility for participation in the shark research fishery. Qualified vessels will be chosen based on the information provided on the applications and their ability to meet the selection criteria as published in the **Federal Register** notice. A commercial shark permit holder whose vessel was selected to carry an observer in the previous two years for any HMS fishery but failed to comply with the observer regulations specified in § 635.7 will not be considered. A commercial shark

permit holder that has been charged criminally or civilly (i.e., issued a Notice of Violation and Assessment (NOVA) or Notice of Permit Sanction) for any HMS related violation will not be considered for participation in the shark research fishery. Qualified vessels will be randomly selected to participate in the shark research fishery based on their availability and the temporal and spatial needs of the research objectives. If a vessel issued a shark research permit cannot conduct the shark research tasks, for whatever reason, that permit will be revoked and, depending on the status of the research and the fishing year, NMFS will randomly select another qualified vessel to be issued a shark research permit.

(h) *Terms and conditions.* (1) For EFPs, scientific research permits, and public display permits: Written reports on fishing activities, and disposition of all fish captured under a permit issued under this section must be submitted to NMFS within 5 days of return to port. NMFS will provide specific conditions and requirements as needed, consistent with the Consolidated HMS Fishery Management Plan, in the permit. If an individual issued a Federal permit under this section captures no HMS in any given month, either in or outside the EEZ, a "no-catch" report must be submitted to NMFS within 5 days of the last day of that month.

(2) For chartering permits, written reports of fishing activities must be submitted to NMFS by a date specified, and to an address designated, in the terms and conditions of each chartering permit.

(3) An annual written summary report of all fishing activities, and disposition of all fish captured, under the permit must be submitted to NMFS for all EFPs, scientific research permits, display permits, and chartering permits issued under this section within 30 days after the expiration date of the permit.

(4) For shark research permits, all owners and/or operators must comply with the recordkeeping and reporting requirements specified in § 635.5 per the requirement of holding a LAP for sharks.

(5) As stated in § 635.4(a)(6), failure to comply with the recordkeeping and reporting requirements of this section could result in the EFP, scientific research permit, display permit, chartering permit, or shark research permit being revoked, suspended, or modified, and in the denial of any future applications.

■ 16. In § 635.69, paragraph (a) introductory text is revised to read as follows:

**§ 635.69 Vessel monitoring systems.**

(a) *Applicability.* To facilitate enforcement of time/area and fishery closures, an owner or operator of a commercial vessel, permitted to fish for Atlantic HMS under § 635.4 and that fishes with a pelagic or bottom longline or gillnet gear, is required to install a NMFS-approved vessel monitoring system (VMS) unit on board the vessel and operate the VMS unit under the following circumstances:

\* \* \* \* \*

■ 17. In § 635.71, paragraphs (a)(2), (a)(4), (a)(6), (d)(3), (d)(4), (d)(6) through (8), and (d)(10) are revised and paragraphs (d)(15), (d)(16), and (d)(17) are added to read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(2) Fish for, catch, possess, retain, or land Atlantic HMS without the appropriate valid vessel permit, LAP, EFP, scientific research permit, display permit, chartering permit, or shark research permit on board the vessel, as specified in §§ 635.4 and 635.32.

\* \* \* \* \*

(4) Sell or transfer or attempt to sell or transfer, for commercial purposes, an Atlantic tuna, shark, or swordfish other than to a dealer that has a valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested by a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

\* \* \* \* \*

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in §§ 635.5 and 635.32 or in the terms and conditions of a permit issued under § 635.4 or an EFP, scientific research permit, display permit, chartering permit, or shark research permit issued under § 635.32.

\* \* \* \* \*

(d) \* \* \*

(3) Retain, possess, or land a shark of a species group when the fishery for that species group and/or region is closed, as specified in § 635.28(b).

(4) Sell or purchase a shark of a species group when the fishery for that species group and/or region is closed, as specified in § 635.28(b).

\* \* \* \* \*

(6) Fail to maintain a shark in its proper form, as specified in § 635.30(c). Fail to maintain naturally attached shark fins through offloading as specified in § 635.30(c).

(7) Sell or purchase shark fins that are disproportionate to the weight of shark

carcasses, as specified in § 635.30(c) and § 600.1204(e) and (l) of this chapter.

(8) Fail to have shark fins and carcasses weighed and recorded, as specified in § 635.30(c).

\* \* \* \* \*

(10) Retain, possess, sell, or purchase a prohibited shark, including parts or pieces of prohibited sharks, as specified under §§ 635.22(c), 635.24(a), and 635.27(b), or fail to disengage any

hooked or entangled prohibited shark with the least harm possible to the animal as specified at § 635.21(d).

\* \* \* \* \*

(15) Sell or transfer or attempt to sell or transfer a shark or sharks or part of a shark or sharks in excess of the retention limits specified in § 635.24(a).

(16) Purchase, receive, or transfer or attempt to purchase, receive, or transfer a shark or sharks or part of a shark or

sharks landed in excess of the retention limits specified in § 635.24(a).

(17) Replace sharks that are onboard the vessel for retention with sharks of higher quality or size that are caught later in a particular trip as specified in § 635.24(a).

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

RIN 0648–XH17

**Atlantic Highly Migratory Species (HMS); Atlantic Shark Management Measures; Research Fishery**

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

**ACTION:** Notice of intent; request for applications.

**SUMMARY:** NMFS announces its request for applications for the 2008 shark research fishery from commercial shark fishermen. The shark research fishery will allow for the collection of fishery-dependent data for future stock assessments while also allowing NMFS and commercial fishermen to conduct cooperative research to meet the shark research objectives for the Agency. Only commercial vessels participating in the shark research fishery would be able to land sandbar sharks. These vessels would also land non-sandbar large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks. Commercial vessels not participating in the shark research fishery may only land non-sandbar LCS, SCS, and pelagic sharks. Commercial shark fishermen who are interested in participating in the shark research fishery need to submit a completed Shark Research Fishery Permit Application in order to be considered. Generally, these permits will be valid through December 31, 2008, unless otherwise specified, subject to the terms and conditions of individual permits.

**DATES:** Shark Research Fishery Applications must be received no later than 5 p.m., local time, on July 15, 2008.

**ADDRESSES:** Please submit completed applications to the HMS Management Division at:

- Mail: HMS Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

- Fax: (301) 713–1917

For copies of the Shark Research Fishery Application please write to the HMS Management Division at the address listed above, or call (301) 713–2347 (phone), or (301) 713–1917 (fax). Copies of the Shark Research Fishery Application are also available at the HMS website at <http://www.nmfs.noaa.gov/sfa/hms/index.htm>.

**FOR FURTHER INFORMATION CONTACT:**

LeAnn Southward Hogan or Jess Beck, at (301) 713–2347 (phone) or (301) 713–1917 (fax).

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Consolidated HMS Fishery Management Plan (FMP) is implemented by regulations at 50 CFR part 635.

The final rule for Amendment 2 to the Consolidated HMS FMP (published in the Rules section of today's **Federal Register**) established, among other things, a shark research fishery to maintain time series data for stock assessments and to meet NMFS' 2008 research objectives. The shark research fishery also allows selected commercial fishermen the opportunity to earn revenue from selling more sharks, including sandbar sharks, than allowed in the rest of the commercial shark fishery. Only the commercial shark fishermen selected to participate in the shark research fishery would be able to land/harvest sandbars subject to the sandbar quota available for each year (87.9 mt dw/year through December 31, 2012; 116.6 mt dw/year as of January 1, 2013). The selected commercial shark fishermen would also have access to the non-sandbar LCS, SCS, and pelagic shark quotas. Commercial shark fishermen not participating in the shark research fishery may land non-sandbar LCS, SCS, and pelagic sharks subject to quotas and the retention limits per 50 CFR 635.27 and 635.24, respectively. In order to participate in the shark research fishery, commercial shark fishermen need to submit a completed Shark Research Fishery Application showing the vessel and owner(s) meet the specific criteria outlined below.

**Research Objectives**

Each year, NMFS will determine the research objectives for the upcoming shark research fishery. The research objectives are developed by a shark board, which is comprised of representatives within NMFS including representatives from the Southeast Fisheries Science Center (SEFSC) Panama City Laboratory, Northeast Fisheries Science Center (NEFSC) Narragansett Laboratory, the Southeast Regional Office of Protected Resources Division (SERO\PRD), and the HMS Management Division. The research objectives of the shark research fishery are primarily based on the research needs identified in shark stock assessments. Many of the research objectives for 2008 come from the Southeast Data, Assessment and Review (SEDAR) 11, 2005/2006 LCS stock assessment. These objectives were developed with input from non-

governmental organizations, industry representatives, fishery managers, and academics present during the stock assessment workshops. In addition, the shark board identified additional needs for tagging studies, collection of genetic material, and controlled bottom longline (BLL) experiments to assess the impact of different hook types. Specifically, the research objectives for 2008 are to:

- collect reproductive and age data from sandbar sharks throughout the calendar year;
- collect reproductive and age data for Gulf of Mexico blacktip sharks for determination of the reproductive cycle (i.e., annual or biennial frequency);
- collect reproductive and age data from all species of sharks for additional species-specific assessments;
- monitor the size distribution of sandbar sharks and other species captured in the fishery;
- continue on-going tagging programs for identification of migration corridors and stock structure;
- maintain time-series of abundance from previously derived indices for the shark BLL observer program;
- acquire fin-clip samples of all species for genetic analysis;
- attach satellite archival tags to endangered smalltooth sawfish to provide information on critical habitat and preferred depth;
- attach satellite archival tags to prohibited dusky sharks to provide information on daily and seasonal movement patterns, and preferred depth; and,
- evaluate the effects of controlled gear experiments in order to determine the effects of potential hook changes to prohibited species interactions and fishery yields.

**Selection Criteria**

Shark Research Fishery Applications will only be accepted from commercial shark fishermen that hold a current directed or incidental limited access permit. The Shark Research Fishery Application includes, but is not limited to, a request for the following information: type of commercial shark permit possessed; past participation in the commercial shark fishery; past involvement and compliance with HMS observer programs per 50 CFR 635.7; past compliance with HMS regulations at 50 CFR part 635; availability to participate in the shark research fishery; willingness to fish in the regions and season requested; willingness to attend necessary meetings regarding the objectives and research protocols of the shark research fishery; and willingness to carry out the research objectives of the Agency. An applicant that has been

charged criminally or civilly (i.e., issued a Notice of Violation and Assessment (NOVA) or Notice of Permit Sanction) for any HMS related violation will not be considered for participation in the shark research fishery. In addition, applicants that were selected to carry an observer in the previous two years for any HMS fishery, but failed to communicate with NMFS observer programs in order to arrange the placement of an observer before commencing any fishing trip that would have resulted in the incidental catch or harvest of any Atlantic HMS, per 50 CFR 635.7, will not be considered for participation in the 2008 shark research fishery. This includes applicants that were selected to carry an observer in the previous two years for any HMS fishery and failed to comply with all the observer regulations per 50 CFR 635.7, including failure to provide adequate sleeping accommodations per 50 CFR 635.7(e)(1), a sufficiently sized survival craft per 50 CFR 600.746(f)(6), or failure to pass a USCG safety examination per 50 CFR 600.746(c)(2). Exceptions will be made for applicants that were selected for HMS observer coverage but did not fish in the quarter when selected. Applicants that have been non-compliant with any of the HMS observer program regulations in the previous two years, as described above, may be eligible for future participation in shark research fishery activities by demonstrating compliance with observer regulations at 50 CFR 635.7.

#### Selection Process

NMFS will review all submitted applications that are deemed complete and develop a list of qualified applicants. A qualified applicant is an

applicant that has submitted a complete application and has met the selection criteria detailed above. Qualified applicants are eligible to be selected by the SEFSC to participate in the shark research fishery for 2008. NMFS will provide the list of qualified applicants to the SEFSC. The SEFSC will then evaluate the list of qualified applicants and, based on the temporal and spatial needs of the research objectives, the availability of qualified applicants, and the available quota for a given year, will randomly select approximately 10 qualified applicants to conduct the prescribed research.

If deemed necessary, NMFS may hold a public meeting to allow the public to witness the selection of shark research permit recipients from the qualified applicant pool. If a public meeting is held, the public is welcome to observe the selection process, but will not be allowed to participate in or comment during the selection process. If a public meeting is deemed necessary, NMFS will announce details of a public selection meeting in a subsequent **Federal Register** notice.

Once the selection process is complete, NMFS will notify the selected applicants and issue the shark research fishery permits. If needed, NMFS will communicate with the shark research fishery permit holders to arrange a captain's meeting to discuss the research objectives and protocols. The shark research permit holders must contact the NMFS observer coordinator to arrange the placement of a NMFS-approved observer for each shark research trip.

A shark research permit will only be valid for the vessel and owner(s) and terms and conditions listed on the

permit, and thus, cannot be transferred to another vessel or owner(s). Issuance of a shark research permit does not guarantee that the permit holder will be assigned a NMFS-approved observer on any particular trip. Rather, issuance indicates that a vessel may be issued a NMFS-approved observer for a particular trip, and on such trips, may be allowed to harvest Atlantic sharks, including sandbar sharks, in excess of the retention limits described in 50 CFR 635.24(a). The vessel would still be able to participate land non-sandbar, SCS, and pelagic sharks subject to existing retention limits on trips without a NMFS-approved observer. The shark research permit may be revoked or modified at any time and does not confer the right to engage in activities beyond those listed on the shark research fishery permit.

Commercial shark permit holders (directed and incidental) are invited to submit an application to participate in the shark research fishery on an annual basis. Permit applications can be found on the HMS Management Division's website at: <http://www.nmfs.noaa.gov/sfa/hms/index.htm> or by calling (301) 713-2347. Final decisions on the issuance of a shark research fishery permit will depend on the submission of all required information, and NMFS' review of applicant information as outlined above.

**Authority:** 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: June 16, 2008.

**Alan D. Risenhoover**

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

[FR Doc. E8-13960 Filed 6-23-08; 8:45 am]

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# Federal Register

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**Tuesday,  
June 24, 2008**

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**Part IV**

## **Environmental Protection Agency**

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**40 CFR Part 60  
Standards of Performance for Petroleum  
Refineries; Final Rule**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[EPA-HQ-OAR-2007-0011; FRL-8563-2]

RIN 2060-AN72

### Standards of Performance for Petroleum Refineries

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

**ACTION:** Final rule.

**SUMMARY:** EPA is issuing final amendments to the current Standards of Performance for Petroleum Refineries. This action also promulgates separate standards of performance for new, modified, or reconstructed process units at petroleum refineries. The final standards for new process units include emissions limitations and work practice standards for fluid catalytic cracking units, fluid coking units, delayed coking units, fuel gas combustion devices, and sulfur recovery plants. These final standards reflect demonstrated improvements in emissions control technologies and work practices that have occurred since promulgation of the current standards.

**DATES:** These final rules are effective on June 24, 2008. The incorporation by reference of certain publications listed in the final rules is approved by the Director of the Federal Register as of June 24, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2007-0011. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center, Standards of Performance for Petroleum Refineries Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert B. Lucas, Office of Air Quality

Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541-0884; fax number: (919) 541-0246; e-mail address: [lucas.bob@epa.gov](mailto:lucas.bob@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

Categories and entities potentially regulated by these final rules include:

Category	NAICS code <sup>1</sup>	Examples of regulated entities
Industry .....	32411	Petroleum refiners.
Federal government.	.....	Not affected.
State/local/tribal government.	.....	Not affected.

<sup>1</sup>North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 60.100 and 40 CFR 60.100a. If you have any questions regarding the applicability of this proposed action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

###### B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action is available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

###### C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of these final rules is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by August 25, 2008. Under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

###### D. How is this document organized?

The information presented in this preamble is organized as follows:

- I. General Information
  - A. Does this action apply to me?
  - B. Where can I get a copy of this document?
  - C. Judicial Review
  - D. How is this document organized?
- II. Background Information
- III. Summary of the Final Rules and Changes Since Proposal
  - A. What are the final amendments to the standards for petroleum refineries (40 CFR part 60, subpart J)?
  - B. What are the final requirements for new fluid catalytic cracking units and new fluid coking units (40 CFR part 60, subpart Ja)?
  - C. What are the final requirements for new sulfur recovery plants (40 CFR part 60, subpart Jb)?
  - D. What are the final requirements for new fuel gas combustion devices (40 CFR part 60, subpart Jc)?
  - E. What are the final work practice standards (40 CFR part 60, subpart Jd)?
  - F. What are the modification and reconstruction provisions?
- IV. Summary of Significant Comments and Responses
  - A. PM Limits for Fluid Catalytic Cracking Units
  - B. SO<sub>2</sub> Limits for Fluid Catalytic Cracking Units
  - C. NO<sub>x</sub> Limit for Fluid Catalytic Cracking Units

- D. PM and SO<sub>2</sub> Limits for Fluid Coking Units
- E. NO<sub>x</sub> Limit for Fluid Coking Units
- F. SO<sub>2</sub> Limits for Sulfur Recovery Plants
- G. NO<sub>x</sub> Limit for Process Heaters
- H. Fuel Gas Combustion Devices
- I. Flares
- J. Delayed Coking Units
- K. Other Comments
- V. Summary of Cost, Environmental, Energy, and Economic Impacts
  - A. What are the impacts for petroleum refineries?
  - B. What are the secondary impacts?
  - C. What are the economic impacts?
  - D. What are the benefits?
- VI. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
  - K. Congressional Review Act

## II. Background Information

New source performance standards (NSPS) implement CAA section 111(b) and are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The primary purpose of the NSPS is to attain and maintain ambient air quality by ensuring that the best demonstrated emission control technologies are installed as the industrial infrastructure is modernized. Since 1970, the NSPS have been successful in achieving long-term emissions reductions in numerous industries by assuring cost-effective controls are installed on new, reconstructed, or modified sources.

Section 111 of the CAA requires that NSPS reflect the application of the best system of emission reductions which (taking into consideration the cost of achieving such emission reductions, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. This level of control is commonly referred to as best demonstrated technology (BDT).

Section 111(b)(1)(B) of the CAA requires EPA to periodically review and revise the standards of performance, as necessary, to reflect improvements in methods for reducing emissions. As a result of our periodic review of the NSPS for petroleum refineries (40 CFR part 60, subpart J), we proposed amendments to the current standards of performance and separate standards of performance for new process units (72 FR 27278, May 14, 2007). In response to several requests, we extended the 60-day comment period from July 13, 2007, to August 27, 2007 (72 FR 35375, June 28, 2007). We also issued a notice of data availability (NODA) (72 FR 69175, December 7, 2007) to notify the public that additional information had been added to the docket; the NODA also extended the public comment period on the proposed rule to January 7, 2008. We received a total of 38 comments from refineries, industry trade associations, and consultants; State and local environmental and public health agencies; environmental groups; and members of the public during the extended comment period, and 8 additional comments on the NODA. These final rules reflect our full consideration of all of the comments we received. Detailed responses to the comments not included in this preamble are contained in the Response to Comments document which is included in the docket for this rulemaking.

## III. Summary of the Final Rules and Changes Since Proposal

We are promulgating several amendments to provisions in the existing NSPS in 40 CFR part 60, subpart J. Many of these amendments are technical clarifications and corrections that are also included in the final standards in 40 CFR part 60, subpart Ja. For example, we are revising the definition of “fuel gas” to indicate that vapors collected and combusted to comply with certain wastewater and marine vessel loading provisions are not considered fuel gas. Consequently, these vapors are exempt from the sulfur dioxide (SO<sub>2</sub>) treatment standard in 40 CFR 60.104(a)(1) and are not required to be monitored. We are also finalizing certain monitoring exemptions that we proposed for fuel gases that are identified as inherently low sulfur or demonstrated to contain a low sulfur content. See 40 CFR 60.105(a)(4)(iv). We are also revising the coke burn-off equation to account for oxygen (O<sub>2</sub>)—enriched air streams. Other amendments include clarification of definitions and correction of grammatical and typographical errors.

The final standards in 40 CFR part 60, subpart Ja include emission limits for fluid catalytic cracking units (FCCU), fluid coking units (FCU), sulfur recovery plants (SRP), and fuel gas combustion devices. Subpart Ja also includes work practice standards for reducing emissions of volatile organic compounds (VOC) from flares, minimizing SO<sub>2</sub> emissions from fuel gas combustion devices and SRP, and for reducing emissions of VOC from delayed coking units. Only those affected facilities that commence construction, modification, or reconstruction after May 14, 2007 will be affected by the standards in subpart Ja. Units for which construction, modification, or reconstruction commenced on or before May 14, 2007 must continue to comply with the applicable standards under the current NSPS in 40 CFR part 60, subpart J, as amended.

### *A. What are the final amendments to the standards for petroleum refineries (40 CFR part 60, subpart J)?*

As proposed, we are amending the definition of “fuel gas” to specifically exclude vapors that are collected and combusted in an air pollution control device installed to comply with a specified wastewater or marine vessel loading emissions standard. The thermal combustion control devices themselves are still considered to be affected fuel gas combustion devices if they combust other gases that meet the definition of fuel gas, and all auxiliary fuel gas fired to these devices are subject to the fuel gas limit; however, continuous monitoring is not required for the vapors collected from wastewater or marine vessel loading operations that are being incinerated because these gases are not considered to be fuel gases under the definition of “fuel gas” in 40 CFR part 60, subpart J.

We are also finalizing exemptions for certain fuel gas streams from all continuous monitoring requirements. See 40 CFR 60.105(a)(4)(iv). Monitoring is not required for combustion in a flare of process upset gases or flaring of gases from relief valve leakage or emergency malfunctions since these streams are exempt from the standard under 40 CFR 60.104(a)(1). Additionally, monitoring is not required for inherently low sulfur fuel gas streams since the emissions generated by combusting such streams will necessarily be well below the standard. These streams include pilot gas flames, gas streams that meet commercial-grade product specifications with a sulfur content of 30 parts per million by volume (ppmv) or less, fuel gases produced by process

units that are intolerant to sulfur contamination, and fuel gas streams that an owner or operator can demonstrate are inherently low-sulfur. Owners and operators are required to document the exemption for which each fuel gas stream applies and ensure that the stream remains qualified for that exemption.

For accuracy in the calculation of the coke burn-off rate, we are revising the coke burn-off rate equation in 40 CFR 60.106(b)(3) to be consistent with the equation in 40 CFR 63.1564(b)(4)(i) of the National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (40 CFR part 63, subpart UUU). This revision adds a fourth term to the coke burn-off rate equation to account for the use of O<sub>2</sub>-enriched air. Other revisions to the equation change

the constant values and the units of the resulting coke burn-off rate from Megagrams per hour (Mg/hr) and tons per hour (tons/hr) to kilograms per hour (kg/hr) and pounds per hour (lb/hr).

We proposed to amend the definition of “Claus sulfur recovery plant” in 40 CFR 60.101(i) to clarify that the SRP may consist of multiple units and that primary sulfur pits are considered part of the Claus SRP consistent with the Agency’s current position. Commenters expressed concern that change to a 40 CFR part 60, subpart J definition that could lead to retroactive non-compliance. We disagree with those concerns as we believe the definition as currently written provides for such coverage. Nonetheless, we are not amending this definition in the final amendments for subpart J and will continue to address individual applicability issues under our

applicability determination procedures. Similarly, we proposed revisions to the subpart J definitions of “oxidation control system” and “reduction control system” in 40 CFR 60.101(j) and 40 CFR 60.101(k), respectively, to clarify that these systems were intended to recycle the sulfur back to the Claus SRP. The proposed amendments needlessly limit the types of tail gas treatment systems that can be used; therefore, we are not amending these definitions in the final amendments for subpart J.

The final amendments also include technical corrections to fix references and other miscellaneous errors in 40 CFR part 60, subpart J. Table 1 of this preamble describes the miscellaneous technical corrections not previously described in this preamble that are included in the amendments to subpart J.

TABLE 1.—TECHNICAL CORRECTIONS TO 40 CFR PART 60, SUBPART J

Section	Technical correction and reason
60.100	Replace instances of “construction or modification” with “construction, reconstruction, or modification.”
60.100(a)	Replace “except Claus plants of 20 long tons per day (LTD) or less” with “except Claus plants with a design capacity for sulfur feed of 20 long tons per day (LTD) or less” to clarify that the size cutoff is based upon design capacity and sulfur content in the inlet stream rather than the amount of sulfur produced.
60.100(b)	Insert ending date for applicability of 40 CFR part 60, subpart J (one date for flares and another date for all other affected facilities); sources beginning construction, reconstruction, or modification after this date will be subject to 40 CFR part 60, subpart Ja.
60.102(b)	Replace “g/MJ” with “grams per Gigajoule (g/GJ)” to correct units.
60.104(b)(1)	Replace “sulfur dioxide” with “SO <sub>2</sub> ” and replace “50 ppm by volume (vppm)” with “50 ppm by volume (ppmv)” for consistency in unit and acronym definition.
60.104(b)(2)	Add “to reduce SO <sub>2</sub> emissions” to the end of the phrase “Without the use of an add-on control device” at the beginning of the paragraph to clarify the type of control device to which this paragraph refers; replace “sulfur dioxide” with “SO <sub>2</sub> ” for consistency in acronym definition.
60.105(a)(3)	Add “either” before “an instrument for continuously monitoring” and replace “except where an H <sub>2</sub> S monitor is installed under paragraph (a)(4)” with “or monitoring as provided in paragraph (a)(4)” to more accurately refer to the requirements of § 60.105(a)(4) and clarify that there is a choice of monitoring requirements.
60.105(a)(3)(iv)	Replace “accurately represents the S <sub>2</sub> emissions” with “accurately represents the SO <sub>2</sub> emissions” to correct a typographical error.
60.105(a)(4)	Replace “In place” with “Instead” at the beginning of this paragraph and add “for fuel gas combustion devices subject to § 60.104(a)(1)” after “paragraph (a)(3) of this section” to clarify that there is a choice of monitoring requirements.
60.105(a)(8)	Replace “seeks to comply with § 60.104(b)(1)” with “seeks to comply specifically with the 90-percent reduction option under § 60.104(b)(1)” to clearly identify the emission limit option to which the monitoring requirement in this paragraph refers.
60.105(a)(8)(i)	Change “shall be set 125 percent” to “shall be set at 125 percent” to correct a grammatical error; replace “sulfur dioxide” with “SO <sub>2</sub> ” for consistency in acronym definition.
60.106(e)(2)	Replace the incorrect reference to 40 CFR 60.105(a)(1) with a correct reference to 40 CFR 60.104(a)(1); add “The method ANSI/ASME PTC 19.10–1981, “Flue and Exhaust Gas Analyses,” (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6 of Appendix A–4 to part 60.” after the first sentence of this paragraph to include a voluntary consensus method.
60.107(c)(1)(i)	Replace both occurrences of “50 vppm” with “50 ppmv” for consistency in unit definition.
60.107(f)	Redesignate current 40 CFR 60.107(e) as 40 CFR 60.107(f) to allow space for a new paragraph (e).
60.107(g)	Redesignate current 40 CFR 60.107(f) as 40 CFR 60.107(g) to allow space for a new paragraph (e).
60.108(e)	Replace the incorrect reference to 40 CFR 60.107(e) with a correct reference to 40 CFR 60.107(f).

*B. What are the final requirements for new fluid catalytic cracking units and new fluid coking units (40 CFR part 60, subpart Ja)?*

The final standards for new FCCU include emission limits for particulate matter (PM), SO<sub>2</sub>, nitrogen oxides (NO<sub>x</sub>), and carbon monoxide (CO). The

final standards include no universal opacity limit because the opacity limit in 40 CFR part 60, subpart J is intended to ensure compliance with the PM limit. 40 CFR part 60, subpart Ja requires that sources use direct PM monitoring, bag leak detection systems, or parameter monitoring (along with annual emission tests) to ensure compliance with the PM

limit. A provision for a site-specific opacity operating limit is provided for units that meet the PM emission limits using a cyclone.

For PM emissions from new FCCU and new FCU, we proposed a PM limit of 0.5 pounds (lb)/1,000 lb coke burnoff in the regenerator or (if a PM continuous emission monitoring system (CEMS) is

used), 0.020 grains per dry standard cubic feet (gr/dscf) corrected to 0 percent excess air. We have revised the final PM standards to establish separate limits for modified or reconstructed FCCU (1 lb/1,000 lb coke burn or 0.040 gr/dscf corrected to 0 percent excess air) and newly constructed FCCU (0.5 lb/1,000 lb coke burn or 0.020 gr/dscf corrected to 0 percent excess air). The final PM limit for new, modified, or reconstructed FCU is 1 lb/1,000 lb coke burn or 0.040 gr/dscf corrected to 0 percent excess air.

Initial compliance with the PM emission limits for FCCU and FCU is determined using EPA Method 5, 5B or 5F (40 CFR part 60, appendix A-3) instead of being restricted to only EPA Method 5 as previously proposed. Procedures for computing the PM emission rate using the total PM concentration, effluent gas flow rate, and coke burn-off rate are the same as in 40 CFR part 60, subpart J, as amended. To demonstrate ongoing compliance, an owner or operator must monitor PM emission control device operating parameters and conduct annual PM performance tests, use a PM CEMS, or operate bag leak detection systems and conduct annual PM performance tests. A new alternative allows refineries with wet scrubbers as PM control devices to use the approved alternative in 40 CFR 63.1573(a) for determining exhaust gas flow rate instead of a continuous parameter monitoring system (CPMS). An alternative to the requirements for monitoring the pressure drop from wet scrubbers that are equipped with jet ejectors or atomizing spray nozzles is to conduct a daily check of the air or water pressure to the nozzles and record the results of each inspection. The final rule also includes procedures for establishing an alternative opacity operating limit for refiners that use continuous opacity monitoring systems (COMS); this alternative is allowed only for units that choose to comply with the PM limit using cyclones. If operating parameters are used to demonstrate ongoing compliance, the owner or operator must monitor the same parameters during the initial performance test, and develop operating parameter limits for the applicable parameters. The operating limits must be based on the three-run average of the values for the applicable parameters measured over the three test runs. If ongoing compliance is demonstrated using a PM CEMS, the CEMS must meet the conditions in Performance Specification 11 (40 CFR part 60, appendix B) and the quality assurance

(QA) procedures in Procedure 2, 40 CFR part 60, appendix F. The relative response audits must be conducted annually (in lieu of annual performance tests for units not employing a PM CEMS) and response correlation audits must be conducted once every 5 years.

For NO<sub>x</sub> emissions from the affected FCCU and FCU, we proposed a limit of 80 ppmv based on a 7-day rolling average (dry basis corrected to 0 percent excess air) and co-proposed having no limit for FCU. We are adopting the 80 ppmv NO<sub>x</sub> emission limits for FCCU and FCU as proposed. Initial compliance with the 80 ppmv emission limit is demonstrated by conducting a performance evaluation of the CEMS in accordance with Performance Specification 2 in 40 CFR part 60, appendix B, with Method 7 (40 CFR part 60, appendix A-4) as the reference method. Ongoing compliance with these emission limits is determined using the CEMS to measure NO<sub>x</sub> emissions as discharged to the atmosphere, averaged over 7-day periods.

No changes have been made to the proposed SO<sub>2</sub> emission limits for affected FCCU and FCU. The final SO<sub>2</sub> emission limits are to maintain SO<sub>2</sub> emissions to the atmosphere less than or equal to 50 ppmv on a 7-day rolling average basis, and less than or equal to 25 ppmv on a 365-day rolling average basis (both limits corrected to 0 percent moisture and 0 percent excess air). Initial compliance with the final SO<sub>2</sub> emission limits are demonstrated by conducting a performance evaluation of the SO<sub>2</sub> CEMS in accordance with Performance Specification 2 (40 CFR part 60, Appendix B) with Method 6, 6A, or 6C (40 CFR part 60, Appendix A-4) as the reference method. Ongoing compliance with both SO<sub>2</sub> emission limits is determined using the CEMS to measure SO<sub>2</sub> emissions as discharged to the atmosphere, averaged over the 7-day and 365-day averaging periods.

No changes have been made since proposal to the CO limits. The final CO emission limit for the affected FCCU and FCU is 500 ppmv (1-hour average, dry at 0 percent excess air). Initial compliance with this emission limit is demonstrated by conducting a performance evaluation for the CEMS in accordance with Performance Specification 4 (40 CFR part 60, appendix B) with Method 10 or 10A (40 CFR part 60, Appendix A-4) as the reference method. For Method 10 (40 CFR part 60, Appendix A-4), the integrated sampling technique is to be used. Ongoing compliance with this emission limit is determined on an hourly basis using the CEMS to measure CO emissions as discharged to the

atmosphere. An exemption from monitoring may be requested for an FCCU or FCU if the owner or operator can demonstrate that "average CO emissions" are less than 50 ppmv (dry basis). As proposed, units that are exempted from the CO monitoring requirements must comply with control device operating parameter limits.

*C. What are the final requirements for new sulfur recovery plants (40 CFR part 60, subpart Ja)?*

For new, modified, and reconstructed SRP with a capacity greater than 20 long tons per day (LTD) (large SRP), we proposed a limit of 250 ppmv total sulfur (combined SO<sub>2</sub> and reduced sulfur compounds) as SO<sub>2</sub> (dry basis at 0 percent excess air determined on a 12-hour rolling average basis). The refinery could comply with the limit for each process train or release point or with a flow rate weighted average of 250 ppmv for all release points. For affected SRP with a capacity less than 20 LTD (small SRP), we proposed a mass emissions limit for total sulfur equal to 1 weight percent or less of sulfur recovered (determined hourly on a 12-hour rolling average basis).

In this final rule, we are adopting the current limits in subpart J (which include separate emission limits for oxidative and reductive systems) for affected large SRP. For these affected SRP, the final limits for SRP having an oxidation control system or a reduction control system followed by incineration is 250 ppmv (dry basis) of SO<sub>2</sub> at zero percent excess air. For an affected SRP with a reduction control system not followed by incineration, the final limit is 300 ppmv of reduced sulfur compounds and 10 ppmv of hydrogen sulfide (H<sub>2</sub>S), each calculated as ppm SO<sub>2</sub> by volume (dry basis) at zero percent excess air. If the SRP consists of multiple process trains or release points, the refinery can comply with the limit for each process train or release point or with a flow rate weighted average of 250 ppmv for all release points. A new alternative allows refineries to use a correlation to calculate their effective emission limit for Claus SRP that use oxygen enrichment in the Claus burner. For a small affected SRP, the sulfur recovery efficiency standard is based on a sulfur recovery efficiency of 99 percent. However, due to the difficulties associated with on-going monitoring of SRP recovery efficiency, in this final rule, we are promulgating concentration limits that correlate with a sulfur recovery efficiency of 99 percent. For a Claus unit with an oxidative control system or any small SRP followed by an incinerator the emission limit is 2,500

ppmv (dry basis) of SO<sub>2</sub> at zero percent excess air. For all other small SRP, the emission limit is 3,000 ppmv reduced sulfur compound and 100 ppmv H<sub>2</sub>S, each calculated as ppm SO<sub>2</sub> by volume (dry basis) at zero percent excess air. A similar correlation is provided for small Claus SRP that use oxygen enrichment, similar to that provided for large SRP. The standards for small SRP apply to all release points from the SRP combined (note that secondary sulfur storage units are not considered part of the SRP). We are not promulgating the H<sub>2</sub>S limit of 10 ppmv (dry basis, at 0 percent excess air determined on a 12-hour rolling average basis) or related operating limits that were included in § 60.102a(e) and (f) of the proposed rule.

Initial compliance with the emission limit for large SRP is demonstrated by conducting a performance evaluation for the SO<sub>2</sub> CEMS in accordance with either Performance Specification 2 (40 CFR part 60, Appendix B) for SRP with oxidation control systems or reduction control systems followed by incineration, or Performance Specification 5 (40 CFR part 60, Appendix B) for SRP with reduction control systems not followed by incineration. The owner or operator must operate and maintain oxygen monitors according to Performance Specification 3 (40 CFR part 60, Appendix B).

Ongoing compliance with the SO<sub>2</sub> limits for large SRP is determined using an SO<sub>2</sub> CEMS (for oxidative or reductive systems followed by incineration) or a CEMS that uses an air or O<sub>2</sub> dilution and oxidation system to convert the reduced sulfur to SO<sub>2</sub> and then measures the total resultant SO<sub>2</sub> concentration (for reductive systems not followed by incineration). An O<sub>2</sub> monitor is also required for converting the measured combined SO<sub>2</sub> concentration to the concentration at 0 percent O<sub>2</sub>.

Initial and ongoing compliance requirements for small SRP are the same as for large SRP.

*D. What are the final requirements for new fuel gas combustion devices (40 CFR part 60, subpart Ja)?*

In the subpart Ja proposal, we divided fuel gas combustion devices into two separate affected sources: "process heaters" and "other fuel gas combustion devices." In response to comments, we have eliminated the proposed definition of "other fuel gas combustion devices" and revised the standards to either refer to fuel gas combustion devices, which include process heaters, or to refer specifically to process heaters. This revision makes the definition of "fuel

gas combustion devices" consistent with subpart J. Based on public comments, we have also added a definition of "flare" as a subcategory of fuel gas combustion devices. The owner or operator of an affected flare must comply with the fuel gas combustion device requirements as well as specific provisions for flares as described in section III.E of this preamble.

We proposed a primary sulfur dioxide emission limit for fuel gas combustion devices of 20 ppmv or less SO<sub>2</sub> (dry at 0 percent excess air) on a 3-hour rolling average basis and 8 ppmv or less on a 365-day rolling average basis. We also proposed an alternative limit of 160 ppmv H<sub>2</sub>S or, in the case of coker-derived fuel gas, 160 ppmv total reduced sulfur (TRS), on a 3-hour rolling average basis and 60 ppmv or less on a 365-day rolling average basis. We are promulgating the 20 ppmv and 8 ppmv limits for SO<sub>2</sub> as proposed. We are also promulgating the alternative limit except that the limits are expressed and measured as H<sub>2</sub>S in all cases. The alternative H<sub>2</sub>S limit is 162 ppmv or less in the fuel gas on a 3-hour rolling average basis and 60 ppmv or less in the fuel gas on a 365-day rolling average basis. The alternative limit of 162 ppmv is based on standard conditions, which are defined in the NSPS General Provisions at 40 CFR 60.2 as being 68°F and 1 atmosphere. Using these as standard conditions, the subpart J emission limit is equivalent to 162 ppmv H<sub>2</sub>S rather than 160 ppmv. The final rule does not include an alternative TRS limit for SO<sub>2</sub>.

Initial compliance with the 20 ppmv SO<sub>2</sub> limit or the 162 ppmv H<sub>2</sub>S concentration limits is demonstrated by conducting a performance evaluation for the CEMS. The performance evaluation for an SO<sub>2</sub> CEMS is conducted in accordance with Performance Specification 2 in 40 CFR part 60, Appendix B. The performance evaluation for an H<sub>2</sub>S CEMS is conducted in accordance with Performance Specification 7 in 40 CFR part 60, Appendix B. Ongoing compliance with the sulfur oxides emission limits is determined using the applicable CEMS to measure either SO<sub>2</sub> in the exhaust gas to the atmosphere or H<sub>2</sub>S in the fuel gas, averaged over the 3-hour and 365-day averaging periods.

Similar to clarifications for 40 CFR part 60, subpart J, the definition of "fuel gas" includes exemptions for vapors collected and combusted in an air pollution control device installed to comply with specified wastewater or marine vessel loading provisions. We are also streamlining the process for an owner or operator to demonstrate that a

fuel gas stream not explicitly exempted from continuous monitoring is inherently low sulfur.

For new, modified, or reconstructed process heaters with a rated capacity greater than 20 million British thermal units per hour (MMBtu/hr), we proposed a NO<sub>x</sub> limit of 80 ppmv (dry basis, corrected to 0 percent excess air) on a 24-hour rolling average basis. The final NO<sub>x</sub> emission limit for affected process heaters is 40 ppmv on a 24-hour rolling average basis (dry at 0 percent excess air) for process heaters greater than 40 MMBtu/hr. For process heaters greater than 100 MMBtu/hr capacity, initial compliance with the 40 ppmv emission limit is demonstrated by conducting a performance evaluation of the CEMS in accordance with Performance Specification 2 in 40 CFR part 60, Appendix B. For process heaters between 40 MMBtu/hr and 100 MMBtu/hr capacity, initial compliance is demonstrated using EPA Method 7 (40 CFR part 60, Appendix A-4). For process heaters greater than 100 MMBtu/hr capacity, ongoing compliance with this emission limit is determined using the CEMS to measure NO<sub>x</sub> emissions as discharged to the atmosphere, averaged over 24-hour periods. For process heaters between 40 MMBtu/hr and 100 MMBtu/hr capacity, ongoing compliance with this emission limit is determined using biennial performance tests.

*E. What are the final work practice standards (40 CFR part 60, subpart Ja)?*

We proposed three work practice standards to reduce SO<sub>2</sub>, VOC, and NO<sub>x</sub> emissions from flares and from startup, shutdown, and malfunction events and to reduce VOC and SO<sub>2</sub> emissions from delayed coking units. We also co-proposed to require only one of these work practice standards: the requirement to depressure delayed coking units. This proposed standard required new delayed coking units to depressure to 5 pounds per square inch gauge (psig) during reactor vessel depressuring and vent the exhaust gases to the fuel gas system.

We are promulgating a work practice standard for delayed coking units and modified requirements to reduce emissions from flares. The final work practice standard for delayed cokers requires affected delayed coking units to depressure to 5 pounds per square inch gauge (psig) during reactor vessel depressuring. We are requiring the exhaust gases to be vented to the fuel gas system as proposed or to a flare.

To reduce SO<sub>2</sub> emissions from the combustion of sour fuel gases, the final rule requires refineries to conduct a root

cause analysis of any emissions limit exceedance or process start-up, shutdown, upset, or malfunction that causes a discharge into the atmosphere, either directly or indirectly, from any fuel gas combustion device or sulfur recovery plant subject to the provisions of subpart Ja that exceeds 500 pounds per day (lb/day) of SO<sub>2</sub>. Recordkeeping and reporting requirements apply in the event of such a discharge. Newly constructed and reconstructed flares must comply with these requirements immediately upon startup. Modified flares must comply no later than the first discharge that occurs after that flare has been an affected flare for 1 year.

In response to comments regarding the work practice standards for fuel gas producing units and associated difficulties with no routine flaring, we re-evaluated the work practice standards and have decided not to promulgate a work practice standard for fuel gas producing units. Rather, we have decided to define a flare as an affected facility and adopt regulations applicable to it. Therefore, we are not promulgating the proposed definition of "fuel gas producing unit" and the proposed requirement for "no routine flaring." Instead, we are promulgating the following requirements for flares that become affected facilities after June 24, 2008: (1) Flare fuel gas flow rate monitoring; (2) a flare fuel gas flow rate limit; and (3) a flare management plan. Affected flares cannot exceed a flow rate of 250,000 standard cubic feet per day (scfd) on a 30-day rolling average basis. In cases where the flow would exceed this value, the owner or operator would install a flare gas recovery system or implement other methods to reduce flaring from the affected flare. To demonstrate compliance with the flow rate limitations, flow rate monitors must be installed and operated. Newly constructed and reconstructed flares must comply with the flow rate limitations and the monitoring requirements immediately upon startup. Modified flares must comply with the flow rate limitations and the associated monitoring provisions no later than 1 year after the flare becomes an affected facility. A provision is provided for an exclusion from the flow limitation for times when the refinery can demonstrate that the refinery produces more fuel gas than it needs to fuel the refinery combustion devices (*i.e.*, it is fuel gas rich) or that the flow is due to an upset or malfunction, provided the refinery follows procedures outlined in the flare management plan. The flare management plan should address potential causes of fuel gas imbalances

(*i.e.*, excess fuel gas) and records to be maintained to document these periods. As described in 40 CFR 60.103a(a), the flare management plan must include a diagram illustrating all connections to each affected flare, identification of the flow rate monitoring device and a detailed description of the manufacturer's specifications regarding quality assurance procedures, procedures to minimize flaring during planned start-up and shut down events, and procedures for implementing root cause analysis when daily flow to the flare exceeds 500,000 scfd. The root cause analysis procedures should address the evaluation of potential causes of upsets or malfunctions and records to be maintained to document the cause of the upset or malfunction. Newly constructed and reconstructed flares must comply with the flare management plan requirements immediately upon startup. Modified flares must comply with the flare management plan requirements no later than 1 year after the flare becomes an affected facility. Additionally, as described above, the owner or operator of a modified flare must conduct the first root cause analysis no later than the first discharge that occurs after that flare has been an affected flare for 1 year. Excess emission events for the flow rate limit of 250,000 scfd and the result of root cause analysis must be reported in the semi-annual compliance reports.

Because affected flares are also affected fuel gas combustion devices, the root cause analysis for SO<sub>2</sub> emissions exceeding 500 lbs/day also applies to all affected flares. However, compliance with the 500 lb/day root cause analysis will also require continuous monitoring of total reduced sulfur of all gases flared. Although all fuel gas combustion devices are required to comply with continuous H<sub>2</sub>S monitoring of fuel gas, flares routinely accept gases from upsets, malfunctions and startup and shutdown events, and H<sub>2</sub>S or sulfur monitoring is not specifically required for these gases. In subpart Ja, we explicitly require TRS monitoring for flares that become affected facilities after June 24, 2008 to ensure that the 500 lb/day SO<sub>2</sub> trigger is accurately measured. The owner or operator of a modified flare must install and operate the TRS monitoring instrument no later than 1 year after the flare becomes an affected facility. The owner or operator of a newly constructed or reconstructed flare must install and operate the TRS monitoring instrument no later than start-up of the flare.

#### *F. What are the modification and reconstruction provisions?*

Existing affected facilities that commence modification or reconstruction after May 14, 2007, are subject to the final standards in 40 CFR part 60, subpart Ja. A modification is any physical or operational change to an existing affected facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies (see 40 CFR 60.14). Changes to an existing affected facility that do not result in an increase in the emission rate, as well as certain changes that have been exempted under the General Provisions (see 40 CFR 60.14(e)), are not considered modifications.

The intermittent operation of a flare makes it difficult to use the criteria of 40 CFR 60.14 to determine when a flare is modified; therefore, we have specified in the final rule the criteria that define a modification to a flare. A flare is considered to be modified if: (1) Any piping from a refinery process unit or fuel gas system is newly connected to the flare or (2) the flare is physically altered to increase flow capacity. See section IV.I of this preamble for further explanation on the change in affected source from a fuel gas producing unit to the flare.

Petroleum refinery process units are subject to the final standards in 40 CFR part 60, subpart Ja if they meet the criteria under the reconstruction provisions, regardless of changes in emission rate. Reconstruction means the replacement of components of an existing facility such that (1) the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and (2) it is technologically and economically feasible to meet the applicable standards (40 CFR 60.15).

#### **IV. Summary of Significant Comments and Responses**

As previously noted, we received a total of 46 comments during the public comment periods associated with the proposed rule and NODA. These comments were received from refineries, industry trade associations, and consultants; State and local environmental and public health agencies; environmental groups; and members of the public. In response to these public comments, most of the cost and emission reduction impact estimates were recalculated, resulting in several changes to the final amendments and new standards. The major comments and our responses are

summarized in the following sections. A summary of the remainder of the comments received during the comment period and responses thereto can be found in the docket for the final amendments and new standards (Docket ID No. EPA-OAR-HQ-2007-0011). The docket also contains further details on all the analyses summarized in the responses below.

In responding to the public comments, we re-evaluated the costs and cost-effectiveness of the control options and re-evaluated our BDT determinations. In our BDT determinations, we took all relevant factors into account consistent with other Agency decisions. It is important to note that, due to the different health and welfare effects associated with different pollutants, the acceptable cost-effectiveness value of a control option is pollutant dependent. These pollutant-specific factors were considered along with other factors in our BDT determinations.

#### A. PM Limits for Fluid Catalytic Cracking Units

*Comment:* Several commenters opposed the proposed tightening of the FCCU PM standards relative to subpart J and the concurrent change in PM monitoring methods. Some commenters supported the co-proposal to keep the 1 lb/1,000 lb coke burn PM emission limit based on Method 5B and/or 5F; other commenters either did not oppose or supported the 0.5 lb/1,000 lb coke burn emission limit for new “grassroots” units, provided EPA demonstrates it is cost-effective and that the limit is based on EPA Method 5B or 5F (40 CFR part 60, Appendix A-3).

Commenters stated that EPA should only impose the more stringent emission limits on new construction because it is much more difficult and costly to meet the proposed emission limits for modified or reconstructed equipment. Commenters suggested that if EPA does include more stringent limits on modifications, it should exclude certain actions (like projects implemented to meet consent decree requirements) from the definition of a modification.

Several commenters suggested that the costs in Table 11 of the proposal preamble are significantly underestimated. Commenters contended that the single “model plant” approach used in EPA’s cost analysis does not

realistically consider important factors such as the inherent sulfur content of the feed, partial-burn versus full-burn regeneration, FCCU/regenerator size, and sources that are already well-controlled due to other regulations. Commenters asserted that the purchased equipment costs escalated from estimates that are 20 to 30 years old are underestimated. Several commenters provided estimates of costs and emission reductions for several actual projects, which they stated indicate that EPA’s costs are significantly underestimated and that the proposed standards are much less cost-effective than presented by EPA.

A number of commenters asserted that the PM standards should be based on EPA Methods 5B or 5F (40 CFR part 60, Appendix A-3), and not on EPA Method 5 of Appendix A-3 to part 60. According to these commenters, the achievability of the proposed 0.5 lb/1,000 lb coke burn PM limit based on EPA Method 5 is questionable because there are inadequate data on FCCU using EPA Method 5, and controlling combined condensable and filterable PM to the 0.5 lb/1,000 lb coke burn level has not been demonstrated to be cost-effective.

On the other hand, several commenters stated that any PM limit must include condensable and filterable PM as condensable PM account for a large portion of refinery PM emissions and all condensable PM is PM that is less than 2.5 micrometers in diameter (PM<sub>2.5</sub>), which has more adverse health impacts than larger particles; the commenters therefore agreed with the use of EPA Method 5 to determine filterable PM and requested that EPA consider Method 202 (40 CFR part 51, Appendix M) for condensable PM. Commenters also stated that the limits for PM and SO<sub>2</sub> in subpart Ja should apply to all new, reconstructed, and modified FCCU. One commenter recommended that a total PM limit (filterable and condensable) be set at 1 lb/1,000 coke burn; another stated that the total PM limit, including both filterable and condensable PM, should be 0.5 lb/1,000 lb coke burn, and EPA has not demonstrated that current BDT cannot achieve this limit. Finally, one commenter suggested that EPA should evaluate the cost of removing each pollutant (PM and SO<sub>2</sub>) separately.

*Response:* In response to these comments, we have revised our analysis

to consider each unique existing FCCU in the United States. By doing so, we fully account for plant size, partial-burn versus full-burn regeneration, existing control configuration, and specific consent decree requirements. (Details on the specific revisions to the analysis can be found in the docket.) With a revised analysis, we were able to more directly assess the impacts of process modifications or reconstruction of existing equipment. We also assessed the effects of PM and SO<sub>2</sub> standards separately in this analysis.

In our revised analysis, we considered three options for PM: (1) Maintain the existing subpart J standard of 1.0 lb/1,000 lb of coke burn-off (filterable PM as measured by Method 5B or 5F); (2) 0.5 lb/1,000 lb of coke burn-off (filterable PM as measured by Method 5B or 5F of Appendix A-3 to part 60); and (3) 0.5 lb/1,000 lb of coke burn-off (filterable PM as measured by Method 5 of Appendix A-3 to part 60). Similar to the analysis for the proposed standards, costs and emission reductions for each option were estimated as the increment between complying with subpart J and subpart Ja. We note that none of the available data suggest that a 0.5 lb/1,000 lb coke burn emission limit that includes both filterable and condensable PM as measured using EPA Method 202 is achievable in practice for the full range of facilities using BDT controls, so we disagree with the comments suggesting this level is appropriate to consider as an option for a total PM limit in this rulemaking.

Option 1 includes the same emissions and requirements for PM as the current 40 CFR part 60, subpart J, so it will achieve no additional emissions reductions. The PM limit in Option 2 is the same numerical limit that was proposed in subpart Ja, but the PM emissions are determined using Methods 5B and 5F (40 CFR part 60, Appendix A-3). These test methods are commonly used for PM tests of FCCU and are the methods that were used to generate a majority of the test data we reviewed. Option 3 is a limit of 0.5 lb/1,000 lb coke burn using Method 5 and is the performance level that was proposed for subpart Ja. The impacts of these three options for new FCCU are presented in Table 2 to this preamble; the impacts for modified and reconstructed FCCU are presented in Table 3 to this preamble.



TABLE 2.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR PM LIMITS CONSIDERED FOR NEW FLUID CATALYTIC CRACKING UNITS SUBJECT TO 40 CFR PART 60, SUBPART JA<sup>a</sup>

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission reduction (tons PM/yr)	Cost effectiveness (\$/ton)	
				Overall	Incremental
2 .....	3,600	1,100	240	5,600	5,600
3 .....	7,100	1,700	300	6,700	11,000

<sup>a</sup> PM cost-effectiveness calculated for PM-fine; 83.3 percent of the PM is PM-fine.

TABLE 3.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR PM LIMITS CONSIDERED FOR RECONSTRUCTED AND MODIFIED FLUID CATALYTIC CRACKING UNITS SUBJECT TO 40 CFR PART 60, SUBPART JA<sup>a</sup>

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission reduction (tons PM/yr)	Cost effectiveness (\$/ton)	
				Overall	Incremental
2 .....	75,000	12,000	690	21,000	21,000
3 .....	100,000	15,000	810	23,000	37,000

<sup>a</sup> PM cost-effectiveness calculated for PM-fine; 83.3 percent of the PM is PM-fine.

The available data and impacts for the options considered suggest that BDT for new FCCU is different than BDT for modified and reconstructed FCCU. For new FCCU, the costs for Option 2 are reasonable compared to the emission reduction achieved. The incremental cost between Option 2 and Option 3 of \$11,000 per ton PM-fine would generally be considered reasonable, but there are uncertainties in the achievability of Option 3. The estimated PM emission reduction achieved by Option 3 compared to Option 2 equals the amount of sulfates and other condensable PM between 250 °F and 320 °F that would be measured by Method 5 but not Method 5B or 5F (40 CFR part 60, Appendix A-3). Additionally, available test data indicate that electrostatic precipitators (ESP) and wet scrubbers can reduce total filterable PM to 0.5 lb/1,000 lb of coke burn or less, as measured by Method 5-equivalent test methods. Although there were few test data points using Method 5-equivalent test methods, we concluded at proposal that both electrostatic precipitators and wet scrubbers can achieve this level of PM emissions. However, the data supporting Option 3 are not extensive, and it is unclear at this time whether a limit of 0.5 kg/Mg of coke burn as measured by Method 5 (40 CFR part 60, Appendix A-3) could be met by all configurations of FCCU. In addition, while the Agency supports reducing condensable PM emissions, the amount of condensable PM captured by Method 5 is small relative to methods that specifically target condensable PM, such as Method 202 (40 CFR part 51, Appendix M). We prefer to develop a single performance standard that considers all condensable PM rather

than implementing phased standards targeting different fractions of condensable PM. Such an approach would be costly and inefficient. Therefore, we conclude that Option 2, control of PM emissions (as measured by Methods 5B and 5F of Appendix A-3 to part 60) to 0.5 lb/1,000 lb of coke burn or less, is BDT for newly constructed FCCU. This option achieves PM emission reductions of 240 tons per year (tons/yr) from a baseline of 910 tons/yr at a cost of \$5,600 per ton of PM.

For modified and reconstructed FCCU, Option 1 is the baseline level of control established by the existing requirements of subpart J. It will achieve no additional cost or emission reduction. The overall costs and the incremental costs for Options 2 and 3 are reasonable compared to the PM emission reduction; however, as with new FCCU, the performance of Option 3 has not been demonstrated, so it is rejected. Most of the existing FCCU that could become subject to subpart Ja through modification or reconstruction are either already subject to subpart J or are covered by the consent decrees. The consent decrees are generally based on the existing subpart J. Industry has made significant investments in complying with these subpart J requirements which may be abandoned if they become subject to subpart Ja. In addition, the additional costs could create a disincentive to modernize FCCU to make them more energy efficient or to produce more refined products. For these reasons, we reject Option 2 for modified or reconstructed FCCU and conclude that control of PM emissions (as measured by Methods 5B and 5F of Appendix A-3 to part 60) is 1.0 lb/1,000 lb of coke burn or less is

BDT for reconstructed and modified FCCU.

#### B. SO<sub>2</sub> Limits for Fluid Catalytic Cracking Units

*Comment:* Several commenters supported the co-proposal for modified and reconstructed FCCU to meet subpart J and not the 25 ppmv 365-day rolling average limit for SO<sub>2</sub>. Commenters provided data to suggest that the retrofits of existing sources are not cost effective, particularly if catalyst additives cannot be used. The current subpart J includes three compliance options: (1) If using an add-on control device, reduce SO<sub>2</sub> emissions by at least 90 percent or to less than 50 ppmv; (2) if not using an add-on control device, limit sulfur oxides emissions (calculated as SO<sub>2</sub>) to no more than 9.8 kg/Mg of coke burn-off; or (3) process in the fluid catalytic cracking unit fresh feed that has a total sulfur content no greater than 0.30 percent by weight. Several commenters objected to the elimination of the additional compliance options in the existing subpart J for subpart Ja because: (1) There are no data to show that the SO<sub>2</sub> limits proposed in subpart Ja are BDT for all FCCU regenerator configurations; (2) the three options are already established as BDT and, therefore, the CAA requires that EPA make them available; and (3) the substantial cost and other burdens for a reconstructed or modified FCCU already complying with one of the alternative options in subpart J to change to daily monitoring by Method 8 (40 CFR part 60, Appendix A-4) or to install CEMS were not addressed in the proposal.

One commenter supported the proposed SO<sub>2</sub> limit under Ja for new "grassroots" FCCU if the standard is demonstrated to be cost-effective.

*Response:* As acknowledged in the previous response on PM standards for FCCU, we completely revised our impacts analysis to evaluate SO<sub>2</sub> standards for every existing FCCU that may become subject to subpart Ja through modification or reconstruction. We did not have access to the inherent sulfur content of the feed for each FCCU so SO<sub>2</sub> emissions are still estimated using average emission factors relevant to the type of control device used for FCCU not subject to consent decree requirements. Nonetheless, we significantly revised the impact analysis to fully account for FCCU-specific throughput, existing controls, and consent decree requirements. (Details on the specific revisions to the analysis can be found in Docket ID No. EPA-HQ-OAR-2007-0011.) We evaluated two options: (1) Current subpart J, including all three compliance options; and (2) 50 ppmv SO<sub>2</sub> on a 7-day average and 25 ppmv on a 365-day average. Data are not

available on which to base a more stringent control level.

Option 1 includes the same emissions and requirements as the current 40 CFR part 60, subpart J, so it will achieve no additional emissions reductions. Based on information provided by vendors and data submitted by petroleum refiners, Option 2 can be met with catalyst additives or a wet scrubber. Of 38 FCCU currently subject to a 50/25 ppmv SO<sub>2</sub> limit through consent decrees, 26 used wet scrubbers and 12 used catalyst additives or other (unspecified) techniques. Given the number of FCCU currently meeting the 50/25 ppmv SO<sub>2</sub> emission limit, we conclude that this limit is technically feasible.

The data in the record suggest that all systems with wet scrubbers can meet the 50/25 ppmv SO<sub>2</sub> emission limit with no additional cost. Further, based on information from the consent decrees, we believe that the owner or operator of an existing FCCU that does not already

have a wet scrubber and is modified or reconstructed such that it becomes subject to subpart Ja can use catalyst additives to meet the 50/25 ppmv SO<sub>2</sub> emission limit. Therefore, the cost of Option 2 is calculated using catalyst additives as the method facilities choose for meeting the standard. We reject the idea that the 90 percent control efficiency, the 9.8 kg/Mg coke burn-off limit, or the 0.3 weight percent sulfur content alternatives are equivalent to the 50/25 ppmv SO<sub>2</sub> emission limit. Based on the original background document for the subpart J standards, these alternatives are expected to have outlet SO<sub>2</sub> concentrations of 200 to 400 ppmv. In reality the currently used wet scrubbers and catalyst additives achieve much higher SO<sub>2</sub> removal efficiencies and much lower outlet SO<sub>2</sub> concentrations. The impacts of these options are presented in Table 4 of this preamble.

TABLE 4.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR SO<sub>2</sub> LIMITS CONSIDERED FOR NEW, RECONSTRUCTED, AND MODIFIED FLUID CATALYTIC CRACKING UNITS SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission reduction (tons SO <sub>2</sub> /yr)	Cost effectiveness (\$/ton)	
				Overall	Incremental
2 .....	0	3,000	4,400	700	700

Based on the data we reviewed to select the options and the estimated impacts of those options, we conclude that Option 2, control of SO<sub>2</sub> emissions to 25 ppmv or less averaged over 365 days and 50 ppmv or less averaged over 7 days, is technically feasible and cost-effective for new, reconstructed, and modified fluid catalytic cracking units. This option has no capital cost and achieves SO<sub>2</sub> emission reductions of 4,400 tons/yr from a baseline of 5,900 tons/yr at a cost of \$700 per ton of SO<sub>2</sub>. Therefore, we conclude that control of SO<sub>2</sub> emissions to 25 ppmv or less averaged over 365 days and 50 ppmv or less averaged over 7 days is BDT for new, reconstructed, or modified fluid catalytic cracking units.

*C. NO<sub>x</sub> Limit for Fluid Catalytic Cracking Units*

*Comment:* Several commenters stated that they would support a NO<sub>x</sub> limit of 80 ppmv for new sources only, provided a corrected impact analysis considers the different characteristics of FCCU and demonstrates that the NO<sub>x</sub> limit for new sources is truly cost-effective. Commenters supported the co-proposal for modified and reconstructed FCCU to meet subpart J and not be subject to a NO<sub>x</sub> emission limit. A few commenters

provided cost data showing the cost of NO<sub>x</sub> controls is high for modified and reconstructed units due to the high cost and space needed for add-on controls. The commenters also stated that a large number of existing FCCU in the U.S. are covered by consent decrees, so significant NO<sub>x</sub> reductions have already been (or will soon be) achieved, and an additional incremental reduction to 20 or 40 ppmv over a 365-day average are not widely demonstrated and would not be cost-effective.

One commenter stated that selective noncatalytic reduction (SNCR), selective catalytic reduction (SCR), and catalyst additives have not been demonstrated over significant periods of operational life. Commenters also cited environmental side-effects, such as the generation of ammonia compounds that contribute to condensable PM emissions, as a reason not to require these types of controls. Commenters also asserted that technologies like flue gas recirculation or advanced burner design are typically only cost-effective for new units and may be technically infeasible for existing FCCU.

One commenter suggested that if a limit is necessary for modified or reconstructed FCCU, recent catalyst additive trials support an emission limit

of approximately 150 ppmv on a 7-day rolling average; this limit would only be achievable if a 24-hour CO averaging time was provided since lowering NO<sub>x</sub> tends to increase CO emissions in FCCU. The commenter noted that this limit is equivalent to the 0.15 pounds per million British thermal units (lb/MMBtu) standard for reconstructed and modified heaters and boilers in NSPS subpart Db.

Other commenters supported the inclusion of a NO<sub>x</sub> limit for FCCU and opposed the co-proposal of no NO<sub>x</sub> standard for modified and reconstructed FCCU. These commenters also recommended more stringent NO<sub>x</sub> limits for FCCU and stated that 80 ppmv does not represent an adequate level of control given the evolution of emerging technologies. In addition, a BDT of 80 ppmv on 7-day rolling average does not look “toward what may be fairly projected for the regulated future” as required by Portland Cement I (486 F. 2d 375 at 384 (D.C. Cir. 1973)) and other court decisions. The commenters disagreed with the feasibility and cost analyses for modified and reconstructed FCCU and stated that FCCU under a consent decree are achieving lower levels than the 80 ppmv proposed by EPA. Given the significant hazards to

human health and the environment posed by NO<sub>x</sub> emissions, the commenters recommended limits of 20 ppmv over a 365-day rolling average and 40 ppmv over a 7-day rolling average for all FCCU. The commenters noted that these limits have been successfully achieved under consent decrees and they are technically feasible on new units at reasonable costs without additional controls.

*Response:* As shown by the disparate comments received, many commenters suggest lower NO<sub>x</sub> emission limits are achievable, while other commenters do not believe the proposed NO<sub>x</sub> emission limits are cost-effective. While we do acknowledge that lower NO<sub>x</sub> emission limits are technically achievable, the incremental cost of achieving these lower limits was high when we evaluated options for the proposed standards. Therefore, we concluded at proposal that 20 or 40 ppmv NO<sub>x</sub> limits were not BDT. In our BDT assessment, we evaluated the various methods to meet alternative NO<sub>x</sub> limits as BDT rather than identifying one technology. One of the reasons for this is that each technology has its own advantages and limitations. While non-platinum oxidation promoters and advanced oxidation controls do not achieve the same reduction in NO<sub>x</sub> emissions as add-on control devices such as SCR,

they do so without any significant secondary impacts. The added NO<sub>x</sub> reduction of SCR and SNCR must be balanced with these secondary impacts. Part of the basis for selecting control methods to achieve an 80 ppmv NO<sub>x</sub> emission limit as BDT included both cost and secondary impacts. This approach is necessary when conducting our BDT analysis, thus ensuring the best overall environmental benefit from the subpart Ja standards.

To ensure that we addressed the commenters' concerns, we re-evaluated the impacts for FCCU NO<sub>x</sub> controls. We also collected additional data from continuous NO<sub>x</sub> monitoring systems for a variety of FCCU NO<sub>x</sub> control systems. These data suggest that as refiners gain more experience with the NO<sub>x</sub> control systems (including catalyst additive improvements), NO<sub>x</sub> control performance has improved over the past year or two. These data suggest that the achievable level for combustion controls and catalyst additives is 80 ppmv and the achievable level for add-on control systems is 20 ppmv. Therefore, we evaluated three outlet NO<sub>x</sub> emission level options as part of the BDT determination: (1) 150 ppmv; (2) 80 ppmv; and (3) 20 ppmv. Each NO<sub>x</sub> concentration is averaged over 7 days. To estimate impacts for Option 1, we estimated that some units have current

NO<sub>x</sub> emissions below 150 ppmv, and all other units can meet this level with combustion controls such as limiting excess O<sub>2</sub> or using non-platinum catalyst combustion promoters and other NO<sub>x</sub>-reducing catalyst additives in a complete combustion catalyst regenerator or a combination of NO<sub>x</sub>-reducing combustion promoters and catalyst additives with low-NO<sub>x</sub> burners (LNB) in a CO boiler after a partial combustion catalyst regenerator. Data collected from FCCU complying with consent decrees show that Option 2 can also be met using combustion controls; therefore, we estimated impacts for Option 2 using a similar method as Option 1. The main difference is that a larger number of FCCU must use combustion controls to meet the emission limit (*i.e.*, the FCCU with current NO<sub>x</sub> emissions between 150 and 80 ppmv would not need controls under Option 1 but would need controls under Option 2). Option 3 is the level at which we expect all units to install more costly control technology such as LoTOx™ or SCR. The estimated fifth-year emission reductions and costs for each option for new FCCU are summarized in Table 5 to this preamble; the impacts for modified and reconstructed FCCU are summarized in Table 6 to this preamble.

TABLE 5.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR NO<sub>x</sub> LIMITS CONSIDERED FOR NEW FLUID CATALYTIC CRACKING UNITS SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission reduction (tons NO <sub>x</sub> /yr)	Cost effectiveness (\$/ton)	
				Overall	Incremental
1 .....	860	320	370	880	880
2 .....	1,200	640	860	750	650
3 .....	12,000	3,600	1,400	2,600	5,800

TABLE 6.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR NO<sub>x</sub> LIMITS CONSIDERED FOR MODIFIED AND RECONSTRUCTED FLUID CATALYTIC CRACKING UNITS SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission reduction (tons NO <sub>x</sub> /yr)	Cost-effectiveness (\$/ton)	
				Overall	Incremental
1 .....	2,800	1,000	860	1,200	1,200
2 .....	3,700	1,600	1,800	920	660
3 .....	45,000	11,000	3,200	3,600	6,800

Options 1 and 2 provide cost-effective NO<sub>x</sub> control with limited or no secondary impacts. The costs of Option 1 and Option 2 are commensurate with the emission reductions for new FCCU as well as modified and reconstructed FCCU. Option 3 would impose compliance costs that are not warranted for the emissions reductions that would be achieved, as shown by the

incremental cost-effectiveness values of about \$6,000 per ton of NO<sub>x</sub> emission reduction between Option 2 and Option 3.

In evaluating these options, we also considered the secondary impacts. In addition to the direct PM impacts of SNCR and SCR, SCR and LoTOx™ units require additional electrical consumption. The increased energy

consumption for Option 3 is 40,000 MW-hr/yr for new, modified, and reconstructed units. We also evaluated the secondary PM, SO<sub>2</sub>, and NO<sub>x</sub> emission impacts of the additional electrical consumption for Option 3. Based on the energy impacts, Option 3 will generate secondary emissions of PM, SO<sub>2</sub>, and NO<sub>x</sub> of 6, 150, and 57 tons/yr, respectively.

Based on the impacts shown in Table 5 and Table 6, and taking secondary impacts into account, we conclude that BDT is Option 2, a NO<sub>x</sub> emission limit of 80 ppmv, for all affected FCCU. For new FCCU, this option achieves NO<sub>x</sub> emission reductions of 860 tons/yr from a baseline of 1,500 tons/yr at a cost of \$750 per ton of NO<sub>x</sub>. For modified and reconstructed FCCU, this option achieves NO<sub>x</sub> emission reductions of 1,800 tons/yr from a baseline of 3,600 tons/yr at a cost of \$920 per ton of NO<sub>x</sub>.

*D. PM and SO<sub>2</sub> Limits for Fluid Coking Units*

*Comment:* Several commenters stated that EPA's proposed standards for FCU under subpart Ja are inappropriate and not cost-effective. Commenters asserted that based on the significant differences between FCU and FCCU operations, a separate BDT determination is needed for FCCU and FCU. Commenters stated that an FCU has higher particulate loading; a heavier feedstock that typically contains a higher concentration of sulfur, increasing the SO<sub>2</sub> and sulfur trioxide (SO<sub>3</sub>) emissions; and a wider range of feedstocks with considerable variability in the nitrogen content.

The commenters noted that the impacts analysis performed for the FCU has shortcomings similar to those in the impacts analysis for FCCU (e.g., the analysis did not properly consider the additional costs and technical difficulties of meeting the proposed emission limits for modified or reconstructed sources, existing units are already controlled and thus the emission reductions have already been achieved). One commenter provided site-specific engineering cost estimates

to indicate that the PM controls are much less cost-effective than EPA estimates. The commenter requested that EPA consider instances when wastewater limitations require regenerative wet scrubbers and amend the impact estimates accordingly. One commenter stated that a newly installed regenerative wet scrubber system on an existing FCU could not meet the proposed Ja PM standards.

*Response:* As described in the preamble to the proposed standards, the original analysis assumed that one of the larger existing FCU will become a modified or reconstructed source in the next 5 years. However, the two larger FCU in the U.S. are both subject to consent decrees: one has installed controls and the other is in the process of installing controls. The remaining two FCU are significantly smaller than the original model FCU; therefore, a new analysis was conducted using a smaller model FCU indicative of the size of the two remaining FCU that are not subject to consent decree requirements. In our new analysis, this FCU has approximately one-half the sulfur content as the larger FCU for which we have data, based on information received regarding the variability in sulfur content across different FCU in the public comments.

In addition to revising our impact analysis, we also collected additional source test data from the one FCU operating a newly installed wet scrubber system to better characterize the control system's performance. At proposal, we had one FCU source test from this source, which suggested that the FCU wet scrubber could meet a PM limit of 0.5 lb/1,000 coke burn. However, following proposal, we received an

additional performance test for this same FCU wet scrubber with an emission rate between 0.5 and 1.0 lb/1,000 lb coke burn. There was no indication of unusual performance during either of these two tests, so we conclude that these tests demonstrate the variability of the emission source and control system. Based on the available data, therefore, we conclude that an appropriate PM performance level to consider for a BDT analysis is 1.0 lb/1,000 lb coke burn using EPA Method 5B (40 CFR part 60, Appendix A-3) for a FCU with a wet scrubber. We also conclude that the PM emission limit initially proposed for FCU had not been adequately demonstrated as an emission limit with which one must comply at all times.

Using our revised model FCU and based on the additional source test data, we re-evaluated BDT for PM and SO<sub>2</sub> emissions from FCU based on two options: (1) No new standards, or current subpart J; and (2) a PM limit of 1.0 lb/1,000 lb coke burn (as measured using Methods 5B and 5F of 40 CFR part 60, Appendix A-3), a short-term SO<sub>2</sub> limit of 50 ppmv averaged over 7 days, and a long-term SO<sub>2</sub> limit of 25 ppmv averaged over 365 days. Unlike the FCCU, catalyst additives cannot be used in a FCU to reduce SO<sub>2</sub>, so a wet scrubber is the most likely technology (and the one demonstrated technology) that would be used to meet the PM and SO<sub>2</sub> limits of Option 2. Therefore, we estimated costs for an enhanced wet scrubber to meet both the PM and SO<sub>2</sub> limits. The resulting emission reductions and costs for both of the options are shown in Table 7 of this preamble.

TABLE 7.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR PM AND SO<sub>2</sub> LIMITS CONSIDERED FOR FLUID COKING UNITS SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission reduction (tons PM/yr)	Emission reduction (tons SO <sub>2</sub> /yr)	Cost effectiveness (\$/ton PM and SO <sub>2</sub> )
2	10,000	3,200	1,000	5,900	460
2a	100,000	18,600	1,000	5,900	2,700

One commenter indicated that we should consider the costs of a regenerative wet scrubber. This type of system is not needed in most applications; however, in the event such a system were needed, we estimated the cost of a regenerative wet scrubber to meet Option 2. The results of this analysis are also provided in Table 7 as Option 2a. As presented in Table 7, even under the most conservative assumptions the costs associated with

the PM and SO<sub>2</sub> emission reductions are reasonable.

Based on the available technology and the costs presented in Table 7 to this preamble, we conclude that BDT is Option 2, which requires technology that reduces PM emissions to 1.0 lb/1,000 of coke burn and reduces SO<sub>2</sub> emissions to 50 ppmv averaged over 7 days and 25 ppmv averaged over 365 days. This option achieves PM emission reductions of 1,000 tons/yr from a

baseline of 1,100 tons/yr and SO<sub>2</sub> emission reductions of 5,900 tons/yr from a baseline of 6,100 tons/yr at a cost of \$460 per ton of PM and SO<sub>2</sub> combined.

*E. NO<sub>x</sub> Limit for Fluid Coking Units*

*Comment:* A number of commenters opposed the co-proposal of no NO<sub>x</sub> standard for FCU, and some disagreed with EPA's 80 ppmv NO<sub>x</sub> limit for FCU. These commenters recommended limits

of 20 ppmv as a 365-day rolling average and 40 ppmv as a 7-day rolling average for FCU, as has been successfully achieved under consent decrees. The commenters noted that these limits are achievable on new units without additional controls.

One commenter supported the co-proposal that no new NO<sub>x</sub> standard be established for FCU.

*Response:* Similar to the revised analysis for PM and SO<sub>2</sub> impacts, we re-evaluated BDT for the FCU NO<sub>x</sub> controls for a smaller modified or reconstructed FCU. We evaluated three options: (1) No new standards, which is the current subpart J; (2) outlet NO<sub>x</sub> concentration of 80 ppmv; and (3) outlet NO<sub>x</sub> concentration of 20 ppmv. Similar

to the analysis for FCCU NO<sub>x</sub> and depending on the baseline emissions for the FCU, we anticipate that Option 2 can be met using combustion controls and Option 3 will require add-on control technology. The results of this analysis are shown in Table 8 to this preamble.

TABLE 8.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR NO<sub>x</sub> LIMITS CONSIDERED FOR FLUID COKING UNITS SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission/reduction (tons NO <sub>x</sub> /yr)	Cost-effectiveness (\$/ton)	
				Overall	Incremental
2 .....	3,700	850	660	1,300	1,300
3 .....	6,000	1,300	750	1,700	5,000

The costs for Option 1 and Option 2 are commensurate with the emission reductions, but the incremental impacts for Option 3 are not reasonable, as shown in Table 8. Option 3 achieves an additional 90 tons per year NO<sub>x</sub> reduction, but the incremental costs between options 2 and 3 of achieving this reduction is \$5,000 per ton of NO<sub>x</sub> removed. The cost of achieving this 12 percent additional emission reduction nearly triples the total annualized cost of operating the controls. As with FCCU, the add-on NO<sub>x</sub> controls for FCU have increased energy requirements and secondary air pollution impacts. Based on these projected impacts, we support our original determination that BDT is Option 2, or technology needed to meet an outlet NO<sub>x</sub> concentration of 80 ppmv or less. This option achieves NO<sub>x</sub> emission reductions of 660 tons/yr from a baseline of 800 tons/yr at a cost of \$1,300 per ton of NO<sub>x</sub>.

*F. SO<sub>2</sub> Limit for Small Sulfur Recovery Plants*

*Comment:* One commenter stated that no new requirements should be added for SRP less than 20 LTD (small SRP) because the controls are not cost-effective. The commenter provided data on tail gas treatment projects but noted that these costs are for large SRP, and controls for small SRP will be less cost-effective. Several commenters noted that if EPA does establish standards for small SRP, the monitoring and compliance evaluation methods for the 99 percent control standard are not clearly specified in the rule and could create difficulties in documenting compliance for small Claus plants. Therefore, the small SRP should be allowed to comply with the 250 ppmv SO<sub>2</sub> emission limit provided to large SRP. One commenter suggested that non-Claus units should be subject to a 95 percent recovery efficiency standard.

*Response:* To ensure that we addressed the commenters' concerns regarding cost-effectiveness, we re-

evaluated the impacts for small SRP. We adjusted our cost estimates upward based on capital costs provided by industry representatives. We evaluated three SO<sub>2</sub> control options as part of the BDT determination for small SRP: (1) No new standards, or current subpart J; (2) 99 percent sulfur recovery; and (3) 99.9 percent sulfur recovery. As noted in the preamble to the proposed standards (section V.D), the 99 percent and 99.9 percent recovery levels are achievable for SRP of all sizes by various types of SRP or tail gas treatments.

The estimated fifth-year emission reductions and costs for new SRP are summarized in Table 9 to this preamble; the impacts for modified and reconstructed SRP are summarized in Table 10 to this preamble. These values reflect the impacts only for small SRP; there are no additional cost impacts for large Claus units because they would already have to comply with the existing standards in subpart J.

TABLE 9.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR SO<sub>2</sub> LIMITS CONSIDERED FOR NEW SMALL SULFUR RECOVERY PLANTS SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission reduction (tons SO <sub>2</sub> /yr)	Cost-effectiveness (\$/ton)	
				Overall	Incremental
2 .....	130	63	42	1,500	1,500
3 .....	590	230	52	4,500	18,000

TABLE 10.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR SO<sub>2</sub> LIMITS CONSIDERED FOR MODIFIED AND RECONSTRUCTED SMALL SULFUR RECOVERY PLANTS SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission reduction (tons SO <sub>2</sub> /yr)	Cost-effectiveness (\$/ton)	
				Overall	Incremental
2 .....	1,600	670	380	1,800	1,800

TABLE 10.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR SO<sub>2</sub> LIMITS CONSIDERED FOR MODIFIED AND RECONSTRUCTED SMALL SULFUR RECOVERY PLANTS SUBJECT TO 40 CFR PART 60, SUBPART JA—Continued

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission reduction (tons SO <sub>2</sub> /yr)	Cost-effectiveness (\$/ton)	
				Overall	Incremental
3 .....	7,800	2,600	470	5,700	23,000

The costs for Option 2 are reasonable considering the emission reductions achieved, but the incremental impacts shown in Table 9 and Table 10 for Option 3 are beyond the costs that the Agency believes are reasonable for these small units to achieve an additional 100 tons per year of SO<sub>2</sub> emission reductions. The additional equipment needed to achieve these reductions quadruples the capital costs. These smaller units would also generally be found at small refineries. Based on these projected impacts and available performance data, we support our original determination that BDT is Option 2, or 99 percent sulfur recovery. For new SRP, this option achieves SO<sub>2</sub> emission reductions of 42 tons/yr from a baseline of 150 tons/yr at a cost of \$1,500 per ton of SO<sub>2</sub>. For modified and reconstructed SRP, this option achieves SO<sub>2</sub> emission reductions of 380 tons/yr from a baseline of 1,400 tons/yr at a cost of \$1,800 per ton of SO<sub>2</sub>.

We note that we are also revising the format of the standard in response to public comments in terms of sulfur outlet concentrations. Based on the Option 2 BDT selection of a recovery efficiency of 99 percent, the emission limit for small SRP is either 2,500 ppmv SO<sub>2</sub> or 3,000 ppmv reduced sulfur compounds and 100 ppmv of H<sub>2</sub>S, both of which are determined on a dry basis, corrected to 0 percent O<sub>2</sub>.

*G. NO<sub>x</sub> Limit for Process Heaters*

Comment: Several commenters stated that the 80 ppmv NO<sub>x</sub> limit for process heaters is not stringent enough. Commenters stated that considering recent settlement negotiations and regulation development, NO<sub>x</sub> emissions reductions well below 80 ppmv can be achieved cost effectively. The commenters stated that NO<sub>x</sub> emissions of less than 40 ppmv at 0 percent O<sub>2</sub> are achievable with combustion modifications such as LNB, ultra low—NO<sub>x</sub> burners (ULNB), and flue gas recirculation technologies; post-combustion controls such as SCR, SNCR, and LoTOx™ achieve NO<sub>x</sub>

reductions an order of magnitude below those from combustion modifications. The commenters noted that Bay Area Air Quality Management District (BAAQMD) Regulation 9, Rule 10, requires process heaters to meet a 0.033 lb/MMBtu NO<sub>x</sub> limit (roughly 32 ppmv NO<sub>x</sub> at 0 percent oxygen). One commenter stated that 30 ppmv has been demonstrated under consent decrees to be an achievable level and ample technology exists. The commenters also noted that 7 to 10 ppmv NO<sub>x</sub> limits (at 3 percent oxygen) have been achieved in practice. One commenter stated that NSPS subparts J and Ja should impose NO<sub>x</sub> emission limits on all fuel gas combustion devices that are at least as stringent as the most stringent consent decree. Some consent decrees require next generation ULNB designed to achieve NO<sub>x</sub> emissions rates of 0.012 to 0.020 lb/MMBtu (12 to 20 ppmv NO<sub>x</sub> at 0 percent oxygen). Commenters recommending more stringent requirements suggested limits ranging from 7 ppmv NO<sub>x</sub> (at 3 percent oxygen) to 30 ppmv for new process heaters fueled by refinery fuel gas.

Other commenters stated that alternative monitoring options should be provided to small fuel gas combustion devices due to the high costs of CEMS relative to the emissions from the small devices. One commenter suggested an exemption from the fuel gas monitoring requirements for process heaters less than 50 MMBtu/hr. Another commenter recommended an exemption from the fuel gas monitoring requirements for process heaters less than 40 MMBtu/hr as used by South Coast Air Quality Management District (SCAQMD).

*Response:* We revisited the BDT determination based on the public comments and revised the methodology used to calculate the cost and emission reduction impacts for the proposed standards. We evaluated three options as part of the BDT determination. Each option consists of a potential NO<sub>x</sub>

emission limit and applicability based on process heater size. These differ slightly from the proposal options based on commenter suggestions. Option 1 would limit NO<sub>x</sub> emissions to 80 ppmv or less for all process heaters with a capacity greater than 20 MMBtu/hr (the proposed standards). Option 2 would limit NO<sub>x</sub> emissions to 40 ppmv or less for all process heaters with a capacity greater than 40 MMBtu/hr. This option is similar to many consent decrees that set an emission limit of 0.040 lb/MMBtu (roughly 40 ppmv NO<sub>x</sub> at 0 percent oxygen) for process heaters greater than 40 MMBtu/hr. Option 3 would limit NO<sub>x</sub> emissions to 20 ppmv or less for all process heaters with a capacity greater than 40 MMBtu/hr. In each option, the NO<sub>x</sub> concentration is based on a 24-hour rolling average.

The estimated fifth-year emission reductions and costs for each option for new process heaters are summarized in Table 11 of this preamble; impacts for modified and reconstructed process heaters are summarized in Table 12 of this preamble. Similar to the proposal analysis, we considered LNB, ULNB, flue gas recirculation, SCR, SNCR, and LoTOx™ as feasible technologies. We believe that nearly all process heaters at refineries that will become subject to subpart Ja can meet Option 1 or Option 2 using combustion controls (LNB or ULNB). Most process heaters would need to use more efficient control technologies, such as LoTOx™ or SCR, to meet the NO<sub>x</sub> concentration limit in Option 3. Per commenters' request to focus on the larger units, Options 2 and 3 do not include process heaters between 20 MMBtu/hr and 40 MMBtu/hr. We evaluated the cost-effectiveness of NO<sub>x</sub> control options for these units to achieve the proposed standard of 80 ppmv. For these process heaters with smaller capacities we found the cost-effectiveness ranged from \$3,500/ton to \$4,200/ton of NO<sub>x</sub> reduced, which was determined not to be reasonable for these small heaters, which would primarily be located at small refineries.

TABLE 11.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR NO<sub>x</sub> LIMITS CONSIDERED FOR NEW PROCESS HEATERS SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission reduction (tons NO <sub>x</sub> /yr)	Cost-effectiveness (\$/ton)	
				Overall	Incremental
1 .....	9,000	7,300	4,800	1,500	1,500
2 .....	9,000	7,500	5,200	1,400	500
3 .....	110,000	30,000	5,900	5,100	37,000

TABLE 12.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR NO<sub>x</sub> LIMITS CONSIDERED FOR MODIFIED AND RECONSTRUCTED PROCESS HEATERS SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission reduction (tons NO <sub>x</sub> /yr)	Cost-effectiveness (\$/ton)	
				Overall	Incremental
1 .....	12,000	4,000	2,100	1,900	1,900
2 .....	14,000	4,300	2,200	1,900	2,100
3 .....	64,000	15,000	2,500	5,900	39,000

Based on the impacts in Table 11 and Table 12, the costs of Options 1 and 2 are reasonable compared to the emission reductions. The incremental cost between Options 2 and 3 of almost \$40,000/ton of NO<sub>x</sub> is not commensurate with the additional 1,000 tons of emission reduction achieved for new and modified or reconstructed process heaters. Moreover, the capital costs of Option 3 are about \$150 million greater than the capital costs for Option 2, which are only \$23 million. Therefore, we conclude that BDT for process heaters greater than 40 MMBtu/hr is technology that achieves an outlet NO<sub>x</sub> concentration of 40 ppmv or less, or Option 2. For new process heaters, this option achieves NO<sub>x</sub> emission reductions of 5,200 tons/yr from a baseline of 7,500 tons/yr at a cost of \$1,400 per ton of NO<sub>x</sub>. For modified and reconstructed process heaters, this option achieves NO<sub>x</sub> emission reductions of 2,200 tons/yr from a baseline of 3,200 tons/yr at a cost of \$1,900 per ton of NO<sub>x</sub>. Although we agree that lower NO<sub>x</sub> concentrations are achievable, we determined that the incremental cost to achieve these lower NO<sub>x</sub> concentrations was not reasonable.

#### H. Fuel Gas Combustion Devices

*Comment:* Several commenters contended that the proposed standards for fuel gas combustion devices were not stringent enough; EPA should ensure that the best demonstrated emission control technologies are installed as the industry is modernized. Given the significant hazards to human health and the environment posed by SO<sub>2</sub> emissions, the commenters suggested that the 365-day average

limits should be 40 ppmv TRS and 5 ppmv SO<sub>2</sub>. The commenters also recommended that EPA tighten the 3-hour concentration limit to 100 ppmv TRS. On the other hand, another commenter contended that although amine treatment applications for product gases can achieve H<sub>2</sub>S concentrations of 1 to 5 ppmv, a tighter standard is not BDT for refinery fuel gas.

Several commenters objected to the addition of the 60 ppmv H<sub>2</sub>S and 8 ppmv SO<sub>2</sub> limits (365-day rolling average) in the proposed subpart Ja standards for fuel gas combustion devices because they are infeasible and/or not cost-effective. According to commenters, EPA erroneously assumed that the additional reductions could be achieved with existing equipment. Although this may be true in some cases, commenters asserted that some refineries would need to add additional amine adsorber/regenerator capacity and some may also need to add additional sulfur recovery capacity (e.g., an additional Claus train and tail gas treatment unit). One commenter requested an exemption be provided for refineries that cannot meet the tighter long-term standard by simply increasing their amine circulation rates. One commenter stated that there will be little incremental environmental benefit from the long-term limit, and it unnecessarily penalizes refineries that designed their amine systems to treat to levels near the proposed annual standard. The commenters provided cost data for examples of projects requiring new amine adsorption units to show that the proposed standards are not cost-effective.

A number of commenters particularly opposed the proposed revision to include TRS limits for fuel gas produced from coking units or any fuel gas mixed with fuel gas produced from coking units. One commenter noted that some State and local agencies have specific TRS standards, but these requirements were not based on a BDT assessment. According to commenters, EPA has included no technical basis for the achievability of the TRS fuel gas standard or explanation of why control of TRS is limited to fuel gas generated by coking units. The commenters recommended that EPA postpone adoption of a TRS limit until it has gathered and evaluated adequate data to conclude that the limit is technically feasible and cost effective.

Commenters stated that EPA did not address the cost-effectiveness and non-air quality impacts of the TRS standards and did not define BDT for the removal of TRS. One commenter stated that without an established *de minimis* level, an entire fuel gas system could be subject to the TRS limits if any amount of coker gas enters the fuel gas system. Amine scrubbing systems are selective to H<sub>2</sub>S and are not suitable to other TRS compounds such as mercaptans, according to the commenters. Commenters stated that the non-H<sub>2</sub>S TRS compounds are not amenable to amine treating and there is no technology readily in-place at refineries for reducing non-H<sub>2</sub>S TRS compounds. Therefore, according to the commenters, removing these other TRS compounds would require significant capital outlay for new equipment, costs that were not considered in the impacts analysis.

One commenter provided an example of a treatment system installed to meet a facility-wide fuel gas total sulfur standard of 40 ppmv; the commenter estimated the capital cost of the entire system to be \$150 million. The commenter also indicated that low-BTU gas from flexicoking units would need to be specially treated at a capital cost of \$61 million to achieve a total sulfur content of less than 150 ppmv, and the treatment would increase energy consumption, resulting in increases in NO<sub>x</sub> and CO emissions. Another commenter provided an order-of-magnitude engineering estimate of \$50 million to treat TRS down to 45 ppmv (long-term average). Based on one commenter's experience with a new fuel gas treating facility, non-acidic TRS cannot be treated down to the proposed levels utilizing Merox-amine treatment. A cost-effective solution could be natural gas blending at the affected combustion device; however, this option has the negative effect of reducing the production of refinery fuel gas and therefore reducing the refinery's capacity for making gasoline.

Several commenters stated that the original BDT determination was based on amine scrubbing of H<sub>2</sub>S and not on SO<sub>2</sub>; the SO<sub>2</sub> standard was simply a compliance option that was calculated to be equivalent to the H<sub>2</sub>S concentration limit at 0 percent excess air. They also asserted that EPA cannot use the SO<sub>2</sub> option as a basis for the TRS standard because the SO<sub>2</sub> option is not BDT. On the other hand, one commenter requested that EPA clarify the fuel gas standards in subpart J to expressly indicate that the 20 ppmv SO<sub>2</sub> limit is a valid compliance option (instead of including it only in the monitoring section). According to the commenter,

focus has been on H<sub>2</sub>S due to the structure of the requirements of subpart J and permits rarely require that combustion sources demonstrate compliance with the 20 ppmv SO<sub>2</sub> limit. The commenter stated that refiners clearly should be allowed to comply with the broader, more comprehensive SO<sub>2</sub> limit.

A few commenters noted that, as H<sub>2</sub>S is part of TRS, the TRS standard is even more stringent than the H<sub>2</sub>S standard. One commenter recommended that no change in the fuel gas standards be made or that the standards focus on H<sub>2</sub>S only with an alternative emission limit for SO<sub>2</sub>. One commenter stated that EPA developed the 160 ppmv H<sub>2</sub>S standard to be more stringent than the 20 ppmv SO<sub>2</sub> standard specifically because H<sub>2</sub>S did not represent all of the sulfur in the fuel gas. Commenters stated that using an F-factor approach (Method 19, 40 CFR part 60, Appendix A-7), the TRS limit that is equivalent to the 20 ppmv SO<sub>2</sub> emission limit is 260 ppmv and the TRS limit that is equivalent to the 8 ppmv SO<sub>2</sub> emission limit is 104 ppmv.

*Response:* We initially concluded that fuel gas generated by the coking unit was mixed with other fuel gases that were mostly H<sub>2</sub>S and that increasing the amine circulation rate would result in additional H<sub>2</sub>S removal that could be used to meet the proposed standard. However, based on a review of the available data, non-H<sub>2</sub>S sulfur content in coker fuel gas may be 300 to 500 ppmv. At these levels, specific treatment to reduce these other sulfur compounds would be needed. As indicated by one commenter, a plant-wide total sulfur limit of 40 ppmv has been achieved in practice in at least one refinery using a treatment train consisting of a Merox system, sponge oil absorbers, MEA absorbers, and caustic

wash towers. Therefore, total sulfur fuel gas treatment methods are demonstrated. We evaluated the cost of this treatment based on information provided in the public comments.

Based on the public comments and additional data, we revisited the BDT determination and assessed three options for increasing SO<sub>2</sub> control of fuel gas combustion devices: (1) 20 ppmv SO<sub>2</sub> or 162 ppmv H<sub>2</sub>S averaged over 3 hours; (2) Option 1 plus 8 ppmv SO<sub>2</sub> or 60 ppmv H<sub>2</sub>S averaged over 365 days; and (3) a compliance option of 162 ppmv TRS averaged over 3 hours and 60 ppmv TRS averaged over 365 days for fuel gas combustion devices combusting fuel gas generated by a coking unit and Option 2 for combustion devices combusting fuel gas not generated by a coking unit. Option 1 includes the same limits that are in subpart J, so there are no additional costs or emission reductions beyond those expected from the application of subpart J. To address the commenters' concerns that not all facilities have available amine capacity to ensure compliance with the new long-term limits, we revised our proposal analysis to include additional costs for the estimated 10 percent of the affected facilities that would increase their amine capacity to achieve Option 2. We estimated costs for a separate treatment train that can treat TRS for Option 3 because, based on the public comments received, we have concluded that amine treatment systems are not effective for non-H<sub>2</sub>S components of TRS. The estimated fifth-year impacts of each of these options for new fuel gas combustion devices are presented in Table 13 of this preamble; the impacts for modified and reconstructed fuel gas combustion devices are presented in Table 14 of this preamble.

TABLE 13.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR SO<sub>2</sub> LIMITS CONSIDERED FOR NEW FUEL GAS COMBUSTION DEVICES SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission reduction (tons SO <sub>2</sub> /yr)	Cost-effectiveness (\$/ton)	
				Overall	Incremental
2 .....	1,200	720	510	1,400	1,400
3 .....	100,000	13,000	770	17,000	47,000

TABLE 14.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR SO<sub>2</sub> LIMITS CONSIDERED FOR MODIFIED AND RECONSTRUCTED FUEL GAS COMBUSTION DEVICES SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission reduction (tons SO <sub>2</sub> /yr)	Cost-effectiveness (\$/ton)	
				Overall	Incremental
2 .....	33,000	11,000	4,700	2,400	2,400
3 .....	1,700,000	200,000	7,600	26,000	63,000



Overall costs for Options 1 and 2 are reasonable compared to the emission reduction achieved for new, modified and reconstructed fuel gas combustion devices. We further evaluated the incremental costs and reductions between the three options and found that they were reasonable for Options 1 and 2, while the incremental cost for Option 3 is not. While Option 3 provides significant additional SO<sub>2</sub> emission reductions, the additional capital cost of \$1.7 billion is high and could pose a significant barrier to future refinery upgrades and expansions. Based on these impacts and consideration of current operating practices, we conclude that BDT is use of technology that reduces the emissions from affected fuel gas combustion devices to 20 ppmv SO<sub>2</sub> or 162 ppmv H<sub>2</sub>S averaged over 3 hours and 8 ppmv SO<sub>2</sub> or 60 ppmv H<sub>2</sub>S averaged over 365 days, or Option 2. For new fuel gas combustion devices, this option achieves SO<sub>2</sub> emission reductions of 510 tons/yr from a baseline of 1,000 tons/yr at a cost of \$1,400 per ton of SO<sub>2</sub>. For modified and reconstructed fuel gas combustion devices, this option achieves SO<sub>2</sub> emission reductions of 4,700 tons/yr from a baseline of 10,000 tons/yr at a cost of \$2,400 per ton of SO<sub>2</sub>.

We note that although we have determined that Option 3 is not BDT and we will not limit the amount of SO<sub>2</sub> emissions from combustion of sulfur compounds other than H<sub>2</sub>S in subpart Ja, we plan to continue to work with the industry to understand the magnitude of these SO<sub>2</sub> emissions and to identify technologies that can be cost effectively applied to reduce the emissions. We have learned through this process that the SO<sub>2</sub> emissions from combustion of TRS in coker gas are generally not reflected in emission inventories and we plan to explore this issue in greater detail in the future to determine where SO<sub>2</sub> emissions are underestimated and the best way to correct the inventories.

*Comment:* Several commenters stated that it is impossible for a refinery owner or operator to specify, acquire, install, and calibrate a continuous monitoring system within 15 days of a change that increases the H<sub>2</sub>S concentration such that an exempt stream is no longer exempt. One commenter suggested quarterly stain tube sampling for 1 year prior to revoking an exemption from monitoring to confirm the change is permanent. The commenter suggested that after 1 year of confirmation, an additional 12 months be provided to specify, acquire, install, and calibrate the continuous monitoring system. One commenter suggested 1 year be

provided for installing a CEMS, while another commenter suggested 180 days be provided (with an allowance for an additional extension) for installing a CEMS, rather than the 15 days proposed.

*Response:* We believe that in most cases, the process change would be a deliberate, planned act and that the potential consequences of this deliberate change would be evaluated. That is, before the equipment is modified, the refinery owner or operator is expected to assess the impacts of this change on the exempted fuel gas stream. If the change is expected to increase the sulfur content of the fuel gas, then the owner or operator can plan to install the required CEMS when modifying the process. We recognize that some process changes may have unexpected consequences, and a modification that was not expected to increase the sulfur content of the fuel gas can result in an increase in sulfur content. In this case, it may be impossible to install the required CEMS within 15 days. However, quarterly sampling does not provide any basis by which the refinery owner or operator can demonstrate compliance with the H<sub>2</sub>S concentration standard. Instead, we have added provisions that require an owner or operator to install a CEMS as soon as practicable and no later than 180 days after a change that makes the stream no longer exempt. Between the process change and the time a CEMS is installed, the owner or operator must conduct daily stain tube sampling to demonstrate compliance with the H<sub>2</sub>S concentration standard. During this time, a single daily sample exceeding 162 ppmv must be reported as an exceedance of the 3-hour H<sub>2</sub>S concentration limit and a rolling 365-day average concentration must be determined. A daily average H<sub>2</sub>S concentration of 5 ppmv is to be used for the days prior to the process change for the previously exempt stream in calculating the rolling 365-day average concentration.

#### *I. Flaring of Refinery Fuel Gas*

*Comment:* Several commenters supported the proposed work practice standards to eliminate routine flaring and develop startup, shutdown, and malfunction (SSM) plans; the commenters opposed the co-proposal of no standards. One commenter supported the determination that elimination of routine flaring is BDT, citing reductions in hydrocarbon, NO<sub>x</sub>, SO<sub>2</sub>, and carbon dioxide (CO<sub>2</sub>) emissions. One commenter stated that both subparts J and Ja should explicitly require that flaring be used only as a last

resort in unusual circumstances, such as emergencies, and not on a routine basis. Commenters asserted that monitoring on an ongoing basis is needed to verify that no flaring of nonexempt gases occurs. Commenters stated that subpart Ja should also require refiners to install a flare gas recovery system, although such requirements should not preclude monitoring requirements. One commenter stated that the NSPS should require a SSM plan to eliminate venting or flaring during such planned start-up, shutdown, and maintenance activities and explicitly prohibit venting or flaring during these planned activities; proper operation and maintenance practices should completely eliminate the need to use flares during these activities. One commenter noted that those refineries that have evaluated their startup and shutdown procedures to reduce or eliminate direct venting or flaring during planned startup and shutdown events have demonstrated the best technology; therefore, their actions represent BDT and should be adopted in the NSPS. The commenters also supported conducting a root cause analysis (RCA) in the event of flaring and other venting releases of 500 lb/day SO<sub>2</sub>.

A number of commenters generally supported the intent to reduce flaring and the idea of SSM plans to address flaring during planned startups and shutdowns (one commenter also included combustion of high sulfur-containing fuel gases during a malfunction), flare management plans, and RCA for flare events in excess of 500 lb/day. However, they opposed the work practice standard for elimination of routine flaring and the proposed creation of fuel gas producing units for subpart Ja. The commenters stated that the definition of "fuel gas producing unit" is overly broad, making it difficult to determine what constitutes a modification or reconstruction, and the proposed work practice standard for these units is infeasible, unnecessary, and not cost-effective. Facility operators and regulators would have difficulty discerning if a flaring event was caused by an affected fuel gas producing unit or a unit not subject to the standard. One commenter indicated that there is no *de minimis* level by which units that produce insignificant quantities of fuel gas can be excluded from the extensive work practice standards.

Commenters recommended that the affected source be the flare which is already subject to the standard as a fuel gas combustion device. The commenters suggested that for each affected flare, the facility would develop a written Flare Management Plan designed to minimize

flaring of fuel gas during all periods of operation. This plan, along with the RCA, would ensure that all flaring events with potential excess emissions will be minimized. One commenter noted that EPA could require a flare management plan for any flare tied to a fuel gas system that has an affected fuel gas combustion device as a better alternative to "fuel gas producing units." One commenter noted that an exemption from the notification requirements for modified or reconstructed units could be provided as an incentive for early adoption of the flare management plan; another commenter suggested that regulatory incentives such as exemptions from monitoring and developing flare management plans should be provided for facilities that have installed flare gas recovery systems. One commenter supported this type of requirement for flares currently subject to subpart J, assuming a minimum of 9 months is provided for plan development and implementation. On the other hand, one commenter noted that the definitions of the affected facility under subparts J and Ja are different and recommended that the distinction be made stronger so that it is clear that existing process unit facilities are "grandfathered" and exempt from the flaring minimization standards.

One commenter suggested that the work practices language should be clarified to indicate that routing offgas to the flare system would be acceptable if the system was equipped with a flare gas recovery system. The prohibition should be specific to the flare itself as some flare systems are equipped with recovery compressors, the use of which should be encouraged rather than discouraged.

Commenters stressed the need for flares as safety devices; any flare minimization program must not interfere with the ability of the refinery owner or operator to use flares for safety reasons. The commenters stated that "routine" flaring cannot be adequately defined in practice; therefore, restrictions on "routine" flaring will lead to unsafe operations in attempts to avoid enforcement actions. The commenters requested that EPA include language in the regulation, consistent with the preamble discussion, that: "Nothing in this rule should be construed to compromise refinery operations and practices with regard to safety."

One commenter indicated that the proposed work practice standards for "no routine flaring" interfere with flare minimization plans implemented in response to consent decrees. The

proposed work practice standard could be interpreted as prohibiting flaring during start-up and shutdown, and EPA has not determined this to be BDT. The commenter stated that the BAAQMD analysis applies to eliminating flaring during normal operation [similar to proposed § 60.103a(b)], not during start-up and shutdown as in proposed § 60.103a(a). The commenter provided cost estimates for one refinery to install a recovery system to eliminate flaring during start-up and shutdowns; the costs ranged from \$200,000 to \$800,000 per ton of VOC reduced and higher for other criteria pollutants. Therefore, they contend § 60.103a(a) should clearly exclude start-up and shutdown gases.

A few commenters provided overall project costs for flare gas recovery projects indicating the annual costs are higher than those in the analysis supporting the proposed work practice. One commenter stated that EPA underestimated the cost of flare gas recovery systems and, given the uncertainty in emission reductions, contended that flare gas recovery systems for the no-flaring option are not cost-effective within the NSPS context. The commenter also stated that the regulation should include maintenance provisions for flare gas recovery systems (that allow flaring) during times of routine and non-routine maintenance, as no redundant capacity within the flare system exists.

A number of commenters provided an alternative to EPA's proposed work practice standards. The suggestions included a 500 lb/day SO<sub>2</sub> standard tied with a flare management plan as an alternative compliance option (to the H<sub>2</sub>S concentration limit) for flares. The commenters recommended that this alternative compliance option be provided in both subparts J and Ja and noted that it could be used as an incentive for the flare management plan to cover all flares. One commenter also noted that these requirements should be applicable to flares that receive process gas, fuel gas, or process upset gas; they should not be applicable to flares used solely as an air pollution control device, such as a flare used exclusively to control emissions from a gasoline loading rack. Another commenter clarified that if the refinery elects to comply with this alternative for any flare, all flares at the refinery would need a flare management plan. The commenter noted that EPA could choose to set the 500 lb/day SO<sub>2</sub> limit as a total for all flares for which the alternative compliance option is chosen (*i.e.*, if the alternative compliance option is selected for two flares at a

refinery, the total emissions from both flares would be limited to 500 lb/day).

*Response:* Although commenters suggested that certain provisions be made applicable to facilities subject to subpart J, the following provisions are only applicable to facilities subject to subpart Ja as CAA section 111 provides that new requirements apply only to new sources. We considered these comments and agree that the standards are more straightforward when the affected facility is defined as the flare. Therefore, we have eliminated "fuel gas producing units" as an affected facility in this final rule, and we specifically define a flare as a subset of fuel gas combustion device, which is an affected facility in this final rule. A "flare" means "an open-flame fuel gas combustion device used for burning off unwanted gas or flammable gas and liquids. The flare includes the foundation, flare tip, structural support, burner, igniter, flare controls including air injection or steam injection systems, flame arrestors, knockout pots, piping and header systems."

There are three general work practice standards that were proposed for "fuel gas producing units," which may be summarized as follows: (1) The "no routine flaring" requirement; (2) flare minimization plan for start-up, shutdown, and malfunction events; and (3) a root-cause analysis for SO<sub>2</sub> releases exceeding 500 lb/day (which was proposed for all affected fuel gas producing units). The "no routine flaring" work practice was not intended to prohibit flaring during SSM events; the provisions were intended to apply only during normal operating conditions. We agree with the commenter that suggested that nothing in this rule should be construed to compromise refinery operations and practices with regard to safety. Additionally, as discussed in the preamble to the proposed rule, we specifically rejected a prohibition on flaring for planned start-up and shutdown events. We agree with the commenters that noted that numerous refineries have demonstrated that flare minimization during planned start-up and shutdown activities can greatly reduce flaring during these events. We do believe, however, that a complete elimination of flaring during these events is very site-specific and although it is reported to have been achieved at a limited number of refineries, we do not have information to suggest that it has been adequately demonstrated for universal application. As "no routine flaring" is difficult to define in practice, we have re-evaluated BDT using more specific options.

Option 1 is no additional standards for flares. In Option 2, any routine emissions event or any process start-up, shutdown, upset or malfunction that causes a discharge into the atmosphere more than 500 pounds per day of SO<sub>2</sub> (in excess of the allowable emission limit) from an affected fuel gas combustion device or sulfur recovery plant would require a root cause analysis to be performed. This approach is similar to what is included in most consent decrees. We are also including a requirement for continuous monitoring of TRS for all gases flared (including those from upsets, startups, shutdowns, and malfunction events), in order to accurately measure SO<sub>2</sub> emissions from affected flares.

Option 3 includes: (1) The SO<sub>2</sub> root cause analysis in Option 2; (2) a limit on the fuel gas flow rate to the flare of 250,000 scfd; and (3) a flare management plan for SSM events. The flow limit of 250,000 scfd is based on our cost analysis that indicates that for typical gas streams in quantities above this limit, the value of recovered fuel completely offsets the costs of installing and operating recovery systems. Many refineries have implemented flare gas recovery to reduce energy needs and save money. The flare management plan must: (1) Include a diagram illustrating all connections to each affected flare; (2) identify the flow rate monitoring device and a detailed description of manufacturer's specifications regarding quality assurance procedures; (3) include standard operating procedures for planned start-ups and shutdowns of

refinery process units that vent to the flare (such as staging of process shutdowns) to minimize flaring during these events; (4) include procedures for a root cause analysis of any process upset or equipment malfunction that causes a discharge to the flare in excess of 500,000 scfd; and (5) include an evaluation of potential causes of fuel gas imbalances (*i.e.*, excess fuel gas), upsets or malfunctions and procedures to minimize their occurrence and records to be maintained to document periods of excess fuel gas. Excess emission events for the flow rate limit of 250,000 scfd and the result of root cause analysis must be reported in the semi-annual compliance reports.

Option 4 is identical to Option 3 except that flaring is limited to 50,000 scfd. This level is estimated to be a baseline level that accounts for the flow requirement needed to maintain safe operations of the flare (*i.e.*, flow of sweep gas and compressor cycle gas). For both Option 3 and Option 4, the limit on the flow rate does not apply during malfunctions and unplanned startups and shutdowns. The flow rate limits in Options 3 and 4 were developed to reduce VOC, SO<sub>2</sub>, and NO<sub>x</sub> emissions; the limits are based on 30-day rolling average flow rate values.

It is anticipated that a flare gas recovery system will be used to comply with Options 3 and 4 when a flare is currently used on a continuous basis, and the recovered flare gas offsets natural gas purchases. The cost-effectiveness of the flare gas recovery system is primarily dependent on the

quantity of gas that the system can recover. Many refineries have already implemented similar work practices through consent decrees and local rules (BAAQMD and SCAQMD), and these requirements have had a demonstrated reduction in flaring events. Flare gas recovery will reduce SO<sub>2</sub>, NO<sub>x</sub>, and VOC emissions. However, if a refinery produces more fuel gas than the refinery needs to power its equipment, there is no place the refinery can use the recovered fuel gas and there is no additional natural gas purchases to offset. In these cases, flare gas recovery is not considered technically feasible because the excess fuel gas will have to be flared. Therefore, we have included specific provision within the flare management plan to address instances of excess fuel gas. For periods when the refinery owner or operator can demonstrate, through records of natural gas purchases or other means as described in their flare management plan, that the refinery is fuel gas rich, compliance with the flow limit is demonstrated by implementing the procedures described in the flare management plan.

Impacts for each of the four options are based on estimates of current flaring quantities and include the root cause analysis, flare management plan, and flare gas recovery systems when needed. The impacts for each option for new flares are presented in Table 15 to this preamble; impacts for modified and reconstructed flares are presented in Table 16 to this preamble.

TABLE 15.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR WORK PRACTICES CONSIDERED FOR NEW FLARING DEVICES SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission reduction (tons SO <sub>2</sub> /yr)	Emission reduction (tons NO <sub>x</sub> /yr)	Emission reduction (tons VOC/yr)	Cost-effectiveness (\$/ton)	
						Overall	Incremental
2 .....	0	23	15	0	0	1,600	1,600
3 .....	8,800	(1,300)	16	1	41	(23,000)	(31,000)
4 .....	15,000	(840)	16	1	52	(12,000)	43,000

TABLE 16.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR WORK PRACTICES CONSIDERED FOR MODIFIED AND RECONSTRUCTED FLARING DEVICES SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission reduction (tons SO <sub>2</sub> /yr)	Emission reduction (tons NO <sub>x</sub> /yr)	Emission reduction (tons VOC/yr)	Cost-effectiveness (\$/ton)	
						Overall	Incremental
2 .....	0	92	59	0	0	1,600	1,600
3 .....	35,000	(5,300)	64	4	165	(23,000)	(31,000)
4 .....	59,000	(3,300)	66	6	207	(12,000)	43,000

Based on these impacts and consideration of technically feasible operating practices, we conclude that BDT is Option 3. Option 3 includes a set

of work practice standards that requires root cause analysis for a discharge into the atmosphere in excess of 500 pounds per day of SO<sub>2</sub> (over the allowable

emission limit) from a fuel gas combustion device or sulfur recovery plant or in excess of 500,000 scfd flow to a flare. It also includes a flare

management plan. Finally, fuel gas flow to the flare is limited to 250,000 scfd. To support implementation of these requirements, monitoring and reporting of the flow rate and sulfur content is required. For new flaring devices, this option achieves SO<sub>2</sub> emission reductions of 16 tons/yr from a baseline of 32 tons/yr, NO<sub>x</sub> emission reductions of 1 tons/yr from a baseline of 2 tons/yr, and VOC emission reductions of 41 tons/yr from a baseline of 67 tons/yr with a net fuel savings of \$23,000 per ton of combined SO<sub>2</sub>, NO<sub>x</sub>, and VOC. For modified and reconstructed flaring devices, this option achieves SO<sub>2</sub> emission reductions of 64 tons/yr from a baseline of 129 tons/yr, NO<sub>x</sub> emission reductions of 4 tons/yr from a baseline of 7 tons/yr, and VOC emission reductions of 165 tons/yr from a baseline of 266 tons/yr with a net fuel savings of \$23,000 per ton of combined SO<sub>2</sub>, NO<sub>x</sub>, and VOC.

The flare gas minimization requirements included in the final standards are important to reduce criteria pollutant emissions and conserve energy. However, we recognize that owners and operators also need to be able to make quick changes to existing process units or flare systems to avoid unsafe conditions. It could take an owner or operator more time to implement the flare requirements, especially flow monitoring and any physical changes needed to comply with the limit on flow to the flare, than it took to implement the change to the flare that caused it to be an affected facility. There is the potential for serious safety concerns if the owner or operator must wait until compliance has been achieved with all of the flare gas minimization requirements prior to venting explosive vapors to the flare or modifying the flare system, such as adding a knockout pot for safety reasons. Moreover, avoiding unsafe conditions by requiring immediate shutdown of all process units connected to the potentially affected flare while the owner or operator takes steps to comply with the final provisions specific to flare gas minimization results in additional emissions, significant costs, and large lost production of refined products. By providing 1 year for modified flares to comply with these flare gas minimization provisions, refinery owners and operators have sufficient time to coordinate the installation of the flow rate and sulfur content monitors, to take whatever steps necessary to meet the flow limitations, to develop and implement the flare management plan, and to make other modifications, if needed, regarding

safety and maintenance considerations for other process equipment tied to the flare.

Considering the cost and the energy penalty from the reduction in refined products (e.g., the need to shut down the refinery until the flare gas minimization requirements can be met) and emissions associated with the immediate application of these requirements of the rule to modified flares, we determined that BDT was to phase in the requirements. The owner or operator of a modified flare would have to comply with the applicable H<sub>2</sub>S limit immediately and would have 1 year to implement the flare gas minimization requirements. Therefore, the final standards specify that for modified flares, the H<sub>2</sub>S limits for fuel gas combustion units apply immediately and the flare gas minimization requirements apply no later than 1 year after the flare becomes an affected facility. For newly constructed and reconstructed flares, the H<sub>2</sub>S limits and all of the flare gas minimization requirements apply immediately upon start-up of the affected flare.

*Comment:* Several commenters requested clarification of how one would assess a flare "modification." Questions included: (1) How the emission basis of a flare should be calculated; (2) if the modification determination would be based on flare capacity or increase in discharge capability of units connected to the flare; (3) whether the modification determination would include all possible flaring events or just non-emergency flaring; (4) whether adding a new line to a flare is considered to increase the capacity of the flare and cause a modification; (5) whether flare tip replacements are considered routine maintenance instead of a modification of the flare, even if the new flare tip has a different geometry (e.g., a larger diameter to reduce noise); and (6) how SSM streams are considered when calculating baseline emissions for a modification determination. The commenters also suggested that EPA should clarify whether and how the exemption in § 60.14(e)(2) applies to a flare, including how the production rate for a flare would be defined.

*Response:* Section 60.14(a) defines modification as follows: "Except as provided in paragraphs (e) and (f) of this section, any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification." Section 60.14(e) provides exclusions for maintenance activities, increased

production rates, increased hours of operation, etc. However, except for the maintenance exclusion, the other exemptions are either not applicable or ambiguous when applied to a flare. More importantly, § 60.14(f) states that "Applicable provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this section." Therefore, to eliminate ambiguity, we specifically define what constitutes a flare modification in subpart Ja.

A flare is considered to be modified in one of two ways. First, a flare is considered to be modified when any piping from a refinery process unit or fuel gas system is newly connected to the flare. This new piping could allow additional gas to be sent to the flare, consequently increasing emissions from the flare. Second, a flare is considered to be modified if that flare is physically altered to increase flow capacity.

While in most cases an affected facility must comply with the final standard if it commences construction, reconstruction or modification after the proposal date, section 111(a)(2) of the CAA also provides that in certain circumstances such a source only need comply with the standard if it commences construction after the final date. Given the number of changes between proposal and final, we have concluded that this is one of the rare cases in which the final, rather than proposal, date applies.

In this case, we are promulgating a newly defined affected facility, adding a new provision specifically defining what constitutes a modification of a flare, adding several new requirements, and adding a definition of a flare. All of these changes significantly alter what would be an affected facility and the obligations of the affected facility for purposes of reducing flaring. Furthermore, while some of the requirements that were proposed for the fuel gas producing unit were transferred to the flare as an affected source, the scope of these requirements changed significantly when they were applied to a flare rather than a fuel gas producing unit. Specifically, under the proposal, only the gas stream from the modified fuel gas producing unit was barred from routine flaring. Under the final rule, however all of the units connected to the flare are now addressed, not just the fuel gas producing unit that was new, modified, or reconstructed.

Accordingly, we are providing in the final standards that only those flares commencing construction, reconstruction, or modification after June 24, 2008 must meet the requirements in subpart Ja. Flares

commencing construction, reconstruction, or modification after June 11, 1973, and on or before June 24, 2008 must meet the requirements in subpart J regarding fuel gas combustion devices (*i.e.*, the H<sub>2</sub>S fuel gas limit).

**J. Delayed Coking Units**

*Comment:* Several commenters supported the proposal that requires delayed coking units to depressure the coke drums to the fuel gas system down to 5 psig. One commenter supported venting the delayed coker gas to a flare or to the atmosphere at pressures less than 5 psig; at pressures greater than 5 psig, the commenter suggested that the rule should only prohibit gases from being sent to a flare and allow any other disposition. That is, the commenter stated that EPA should not restrict the disposition of the coker depressurization gas to only the fuel gas system.

One commenter supported inclusion of a coke drum pressure limit above which the coke drum exhaust gases must be sent to a recovery system, disagreed that it is technically infeasible to divert emissions for recovery at pressures below 5 psig, and urged EPA to require venting until the pressure drops below 2 psig. The commenter recently issued a permit including the 2

psig level, and although the modification has not been completed, the commenter believes the requirement is technically feasible.

A number of commenters objected to the finding that BDT is to depressure delayed coking units to the fuel gas system down to 5 psig. Commenters provided examples of coking units whose current mode of operations (*e.g.*, set points or timed cycles) may divert to a flare or to the atmosphere at pressures of approximately 10 to 20 psig and that it would not be cost-effective to modify these units to comply with the proposed work practice standard. One commenter supported the premise that it is cost-effective for delayed coking discharge to be routed to fuel gas blowdown, but depressurization down to 5 psig may not be feasible with existing equipment; the commenter recommended that the work practice simply require a closed blow down system following procedures described in the facility's SSM plan. At a minimum, an alternative is needed for existing units that would require capital expenditure to meet the 5 psig proposal. One commenter stated that compressors cannot recover blowdown system gases at pressures below the fuel gas recovery compressor suction pressure. The minimum pressure at which a suction compressor can operate depends on the

design of the coking unit and the blowdown management system. Because there is uncertainty surrounding the available emission information, the costs are not minimal in most cases, and the emissions are difficult to measure, the commenter stated that EPA cannot determine that controls on coker vents is BDT.

*Response:* Based on the public comments, we re-evaluated BDT for delayed coking units. We considered three options: (1) Depressurization down to 15 psig; (2) depressurization down to 5 psig; and (3) depressurization down to 2 psig. We estimated that the baseline is, on average, depressurization down to 15 psig and then venting to the atmosphere. Therefore, there are no impacts for Option 1. Impacts for Options 2 and 3 were estimated based on the baseline conditions, the size of typical coke drums, and cost information provided in public comments. We also collected emissions test data to support and verify the projected emissions and emission reductions. The impacts for each option for new delayed coking units are presented in Table 17 to this preamble; impacts for modified and reconstructed delayed coking units are presented in Table 18 to this preamble.

**TABLE 17.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR WORK PRACTICES CONSIDERED FOR NEW DELAYED COKING UNITS SUBJECT TO 40 CFR PART 60, SUBPART JA**

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission reduction (tons SO <sub>2</sub> /yr)	Emission reduction (tons VOC/yr)	Cost-effectiveness (\$/ton)	
					Overall	Incremental
2	2,400	230	170	2	1,300	1,300
3	24,000	2,300	230	3	9,900	38,000

**TABLE 18.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR WORK PRACTICES CONSIDERED FOR MODIFIED AND RECONSTRUCTED DELAYED COKING UNITS SUBJECT TO 40 CFR PART 60, SUBPART JA**

Option	Capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Emission reduction (tons SO <sub>2</sub> /yr)	Emission reduction (tons VOC/yr)	Cost-effectiveness (\$/ton)	
					Overall	Incremental
2	14,000	1,400	260	4	5,100	5,100
3	54,000	5,100	340	5	15,000	47,000

Based on these impacts and consideration of technically feasible operating practices, we confirmed our conclusion at proposal that BDT is depressurization down to 5 psig, or Option 2. For new delayed coking units, this option achieves SO<sub>2</sub> emission reductions of 170 tons/yr from a baseline of 520 tons/yr and VOC emission reductions of 2 tons/yr from a baseline of 7 tons/yr at a cost of \$1,300 per ton of combined SO<sub>2</sub> and VOC. For modified and reconstructed delayed

coking units, this option achieves SO<sub>2</sub> emission reductions of 260 tons/yr from a baseline of 780 tons/yr and VOC emission reductions of 4 tons/yr from a baseline of 11 tons/yr at a cost of \$5,100 per ton of combined SO<sub>2</sub> and VOC. Although Option 3 has been established in one refiner's permit, this level of depressurization has not been demonstrated in practice. Additionally, the difference in the quantity of gas released when the set point is 2 psig rather than 5 psig is relatively small, 80

tons of SO<sub>2</sub> and 4 tons of VOC, and the resulting incremental cost-effectiveness from Option 2 to Option 3 is about \$40,000/ton, which is much greater. Therefore, Option 3, or depressurization down to 2 psig, is not BDT.

**K. Other Comments**

*Comment:* One commenter contested the criteria EPA used in its Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (RFA/SBREFA) analysis for defining a

small refiner as one with no more than 1,500 employees or more than 125,000 barrels per day (BPD) average crude capacity and requested that EPA use what the commenter alleged is the commonly recognized definition in other EPA programs of no more than 1,500 employees or more than 155,000 BPD average crude capacity. The commenter noted that EPA did not make any effort in the Regulatory Impact Analysis or in the proposal preamble to support its selection or explain why it adopted this definition.

*Response:* Under the SBA regulations, a small refiner is defined as a refinery with no more than 1,500 employees. See Table in 13 CFR 121.201, NAICS code 324110. Additionally, for government procurement purposes only, footnote 4 to that Table further provides that a small refinery must meet a certain capacity threshold as follows: "For purposes of Government procurement, the petroleum refiner must be a concern that has no more than 1,500 employees nor more than 125,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity." After reviewing our analysis, we realized that we inadvertently used the capacity limit to evaluate the impacts on small refiners; the definition that should have been used is 1,500 employees with no capacity limit. We have recalculated the economic impact on the small entities using the corrected definition of small refiner, and our conclusion that the rule will not have a significant economic impact on a substantial number of small entities has not changed. See section VI.C of this preamble and the Regulatory Impacts Analysis (RIA) in the docket for additional details.

The commenter is incorrect in asserting that EPA uses any other definition for small refiner than the SBA definition when conducting its RFA/SBREFEA analysis in other rulemakings. EPA consistently uses the SBA definition of a small refiner for such purposes. However, in promulgating regulations, EPA may define a small refiner differently when deciding what standards and requirements apply to these facilities. For example, in the fuel standards promulgated by EPA (*e.g.*, Control of Air Pollution From New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements (65 FR 6698)), EPA set different requirements for small refiners than for all other refiners, and the 155,000 BPD capacity cutoff cited by the commenter is one of the criteria used to define a small refiner in those standards. See 40 CFR 80.225. However, the RFA/SBREFEA analysis

conducted in that rulemaking regarding whether those rules had a significant economic impact on a substantial number of small entities was not conducted based on any capacity cutoff. See 65 FR 6817.

*Comment:* One commenter stated that EPA is required under section 111 of the CAA to promulgate NSPS for each of the pollutants emitted by the source category that cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The commenter stated that there is scientific consensus that greenhouse gases are a leading cause of global warming, and anthropogenic emissions of greenhouse gases (GHG) such as CO<sub>2</sub> and methane (CH<sub>4</sub>) are increasing and driving the warming. Petroleum refineries are a significant source of fossil fuel CO<sub>2</sub> emissions because they consume large quantities of energy, and in fact, U.S. petroleum refineries consume over 3.2 percent of the total U.S. energy consumption. Petroleum refineries also emit CH<sub>4</sub> and are responsible for an additional 0.6 teragrams of CO<sub>2</sub> equivalence via CH<sub>4</sub> emissions. Therefore, the commenter believes that EPA must set NSPS for CO<sub>2</sub> and CH<sub>4</sub> because petroleum refineries' emissions of CO<sub>2</sub> and CH<sub>4</sub> cause and contribute significantly to air pollution which may reasonably be anticipated to endanger public health and welfare.

Two commenters cited the Supreme Court decision in *Massachusetts v. EPA*, where the Court found that carbon dioxide and other GHG fit into the statutory definition of "air pollutant" in the CAA. Commenter 0128 stated that in *Massachusetts v. EPA*, the Supreme Court rejected EPA's overly narrow interpretation that greenhouse gases do not fall under the definition. The Court also voided EPA's term "air pollution" and noted that because greenhouse gases both enter the ambient air and warm the atmosphere, they are unquestionably agents of air pollution.

Another commenter contended that while the decision in *Massachusetts v. EPA* states that GHG are "air pollutants" as that term is used in CAA section 111, section 111 does not require EPA to address all air pollutants in NSPS. Therefore, the Supreme Court's decision does not mean that EPA necessarily must regulate GHG through NSPS. Instead of beginning to address GHG in specific NSPS, the commenter stated that EPA should develop a comprehensive plan for addressing GHG that ensures that "any necessary reductions in GHG emissions are achieved in a consistent and equitable manner across all industry sectors." The

commenter further stated that since the issue of GHG emissions was not raised in the proposal preamble for subparts J and Ja, it would be inappropriate for EPA to promulgate GHG standards in those subparts without first proposing the new standards.

*Response:* While section 111(b)(1)(B) of the CAA permits EPA, under appropriate circumstances, to add new standards of performance for additional pollutants concurrent with the 8-year review of existing standards, for the reasons set forth below, EPA declines to promulgate performance standards for GHG, including CO<sub>2</sub> and CH<sub>4</sub>, from petroleum refineries as part of this 8-year review cycle.

Section 111(b)(1)(B) imposes two obligations upon EPA for a source category listed under section 111(b)(1)(A). First, within 1 year of listing a source category, section 111(b)(1)(B) requires the Administrator to "publish proposed regulations, establishing Federal standards of performance for new sources" within such category. After providing "interested persons an opportunity for written comment on such proposed regulations," EPA must then "promulgate, within one year after such publication, such standards" as the Administrator "deems appropriate." The Agency has always interpreted this initial requirement as providing the Administrator with significant flexibility in determining which pollutants are appropriate for regulation under section 111(b)(1)(B). See *National Lime Assoc. v. EPA*, 627 F.2d 416, 426 (DC Cir. 1980) (explaining reasons for not promulgating standards for NO<sub>x</sub>, SO<sub>2</sub>, and CO from lime plants); see also *National Assoc. of Clean Air Agencies v. EPA*, 489 F.3d 1221, 1228–1230 (DC Cir. 2007) (finding that the "deems appropriate" language in CAA section 231 provides a "delegation of authority" that is "both explicit and extraordinarily broad," giving EPA's regulation "controlling weight unless it is manifestly contrary to the statute").

Second, the statute requires that:

"The Administrator shall, at least every 8 years, review and, if appropriate, revise such standards following the procedure required by this subsection for promulgation of such standards. Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard."

Nothing in the 8-year review provision mandates that EPA include a new standard of performance for an air pollutant not already covered by the

standard of performance under review. Instead, the 8-year review provision can be reasonably understood as requiring “review” of only “such standards”<sup>1</sup> as were previously promulgated. As there would be no standard to review for an air pollutant not already subject to the standard, there would be no requirement for promulgating a new standard of performance since the “review” requirement in section 111(b)(1)(B) cannot be transformed into a “promulgation” requirement.<sup>2</sup> Moreover, as noted above, even if the 8-year review provision were a “promulgation” requirement, such a requirement still would not mandate that EPA set performance standards for all air pollutants emitted from the source category. In the 1990 CAA Amendments, Congress amended the definition of “standard of performance” to be “a standard for emissions of air pollutants,” specifically deleting the word “any” from the phrase “any air pollutant” that was contained in the 1977 definition. This amendment restored the definition to the 1970 version. This deliberate change demonstrates that Congress was aware that the 1970 definition did not require EPA to cover all air pollutants emitted from a source category. Additionally, by reinstating the 1970 definition through the 1990 CAA amendments, Congress was also indicating its understanding that EPA is not required to regulate all air pollutants emitted from a source under section 111.

EPA has promulgated new performance standards for pollutants not previously covered concurrent with some previous 8-year review rulemakings. See 52 FR 24672, 24710 (July 1, 1987) (considering PM<sub>10</sub>

controls in future rulemakings); 71 FR 9866 (February 27, 2006) (new PM standards for boilers). Additionally, as commenters correctly point out, EPA is promulgating a new standard of performance for NO<sub>x</sub> emissions from certain affected facilities at refineries in this rulemaking. However, contrary to commenters’ assertions,<sup>3</sup> these actions were discretionary; EPA may, but is not required to, promulgate new standards of performance concurrent with its 8-year review. While it may often be appropriate for EPA to exercise its discretion by promulgating new standards of performance concurrent with an 8-year review, because it is in the process of gathering information and reviewing controls for an industry, for the reasons set forth above, EPA reasonably interprets section 111(b)(1)(B) to not mandate such a result.

In this instance, it is reasonable for EPA not to promulgate performance standards for GHG emissions as part of this 8-year review cycle. We believe that the nature of GHG emissions renders them readily distinguishable from other air pollutants for which we have previously promulgated new performance standards concurrent with an 8-year review of the existing standards. Indeed, GHG emissions present issues that we have never had to address in the context of even an initial NSPS rulemaking for a source category. These differences warrant proceeding initially through a more deliberate process, *i.e.*, the announced advanced notice of proposed rulemaking (ANPR), than in this source category-specific rulemaking. While commenters correctly note that we have previously exercised our discretion to promulgate new performance standards concurrent with an 8-year review, and indeed are doing so here with respect to NO<sub>x</sub>, the exercise of that discretion had limited impact as those air pollutants were either already regulated elsewhere under the Act or were emitted by a sufficiently limited subset of source categories. Here, promulgating new performance standards for these air pollutants in this one source category could potentially mandate regulation for numerous other source categories under several other parts of the Act. Similarly, our initial decision to regulate non-National Ambient Air Quality Standards (NAAQS) air pollutants in an NSPS has

generally raised issues limited to the source category before us. For example, with the exception of landfill related air pollutants,<sup>4</sup> our decisions to regulate non-NAAQS air pollutants were reached at a time prior to the enactment of the statutory Prevention of Significant Deterioration (PSD) program and accordingly did not implicate the many complexities that we are struggling with today and which we intend to address in the ANPR discussed below. See 45 FR 52,676, 52,708–10 (Aug. 7, 1980).

In contrast to those circumstances, the regulation of GHG emissions raises numerous issues that are not well suited to initial resolution in a rulemaking directed at an individual source category. To that end, as Administrator Johnson announced on March 27, 2008, in letters to Senator Barbara Boxer and Representative John Dingell, it is his intent to issue an ANPR in the very near future that explores and seeks public comment on the many complex interconnections between the relevant sections of the Clean Air Act, including section 111, and lays the foundation for a comprehensive path forward with respect to regulation of all GHG.

We have previously noted that at this stage it is most appropriate to address these complexities in an ANPR addressing a variety of interconnected statutory provisions. In his April 10, 2008, testimony before the Subcommittee on Energy and Air Quality, Committee on Energy and Commerce, U.S. House of Representatives, Robert J. Meyers, Principal Deputy Assistant Administrator of the Office of Air and Radiation, further elaborated on the reasons for and anticipated content of an ANPR and discussed some of these complexities. For example, he noted the potential complexities resulting from implementation of the PSD preconstruction review permitting program:

For PSD purposes, major stationary sources are those with the potential to emit 100 tons per year of a regulated air pollutant in the case of certain statutorily-listed source categories, and 250 tons per year in the case of all other source categories. New large schools, nursing homes, and hospitals could be considered a “major source” under this section of the Clean Air Act. For modifications, only those that increase

<sup>4</sup> Because of the unique nature of landfill related air pollutants the Agency determined it was appropriate to define the air pollutants at issue as emissions from landfills and thus limited the potential implications for other programs. See 56 FR 24468, 24470 (May 30, 1991). In other words, only landfills emit these particular air pollutants; thus, it was appropriate that only this source category was subject to the PSD program for this air pollutant.

<sup>1</sup> Commenters assert that “the term ‘such standards’ incorporates the inclusive ‘any’ air pollutant language in the definition of a ‘standard of performance’” and therefore contemplates new standards of performance during the 8-year review. See Comments, pg. 3. However, the word “any” does not appear in the definition of “standard of performance” in the manner quoted by commenters. See CAA section 111(a)(1).

<sup>2</sup> Commenters assert that EPA must develop performance standards during the 8-year review “for any air pollutant” emitted by a source “provided that EPA finds those emissions cause or contribute to air pollution” that may endanger public health or welfare. See Comments, pg. 2. To the extent any such finding were required, EPA notes that no such finding has been made regarding GHG emitted from refineries. Indeed, 111(b)(1)(A), which contains the only endangerment finding requirement in section 111, gives the Administrator significant discretion on the timing of endangerment findings after the initial set of source category listings (“from time to time thereafter shall revise”). Nothing in the statute ties the endangerment and 8-year review requirements. Hence, commenters’ own arguments lack merit and EPA is under no obligation for promulgating GHG performance standards for refineries.

<sup>3</sup> Commenters again predicate their assertions on a prerequisite endangerment finding. See Comments, pg. 4. As explained in footnote 2, EPA has made no such finding and therefore under petitioners’ interpretation is under no obligation to promulgate GHG performance standards for this source category.

emissions above a tonnage threshold established by EPA for each regulated pollutant through rulemaking triggers PSD. Until EPA establishes this so-called "significance" level, however, any increase in a regulated pollutant at a major stationary source undergoing a modification would trigger PSD permitting.

As noted previously, PSD sources are required to install best available control technology (BACT). BACT must be at least as stringent as any applicable NSPS, and is to reflect the maximum degree of emissions reduction achievable for such a facility, taking into account energy, environment and economic impacts and other costs.

Controlling GHG emissions under any section of the Clean Air Act could significantly increase the number of stationary sources subject to PSD permitting.

Because CO<sub>2</sub> is typically emitted in larger quantities than criteria and other traditional air pollutants from combustion sources, facilities not previously subject to Clean Air Act permitting—such as large commercial and residential buildings heated by natural gas boilers—could qualify as major stationary sources for PSD purposes. In addition, some small industrial sources not now covered by PSD could be expected to become subject to PSD due to their GHG emissions.

Currently, our best estimate of the potential impact of including GHG in the PSD program is that the number of PSD permits issued annually nationwide could rise by an order of magnitude above the current 200–300 a year. Such estimates are subject to significant uncertainty. At present, we do not have comprehensive information on GHG emissions from the many categories of stationary sources of such emissions; instead we have relied on available information and general engineering estimates.

Such a broadening of the PSD program could pose significant implementation issues for covered facilities (particularly newly covered facilities) and permitting agencies. EPA is examining the scope of these potential difficulties and whether, for GHG, the program could be limited to larger sources, at least temporarily, in view of the very substantial increase in administrative burden that might otherwise occur. However, at present it is unclear as to whether EPA has the legal discretion to exempt sources above the statutory thresholds. In addition, EPA is exploring concepts for streamlining implementation of the PSD program for smaller sources, such as guidance on general permits or source definitions for BACT determinations and model permits for use by permitting agencies. EPA will address permitting issues in greater detail in the planned ANPR.

Given the complexity of PSD issues arising from regulation of GHG emissions, among other complex issues of regulating a pollutant—particularly a pollutant global in nature—for the first time under the CAA, it is reasonable for the Agency to proceed first by evaluating these issues, and other potential complexities, in the previously announced ANPR rather than by taking action to promulgate performance

standards for GHG emissions in this rulemaking.

In addition to the reasons set forth above, it is appropriate for EPA to decline to promulgate performance standards for GHG emissions concurrent with this 8-year review as section 111(b)(1)(B) does not require that the Agency revise the standards when essential information becomes available too late in the review period. The 8-year review provision itself conditions the need to review a standard on "readily available information on the efficacy of such standard." CAA section 111(b)(1)(B). The legislative history of the 1970 CAA predecessor for the review provision also states that the review obligation depends on the availability of "new technology processes or operating methods." 1970 Sen. Comm. Rep. at 17. Additionally, the *Massachusetts* decision, which held that GHG are air pollutants, was handed down merely four weeks before the court-ordered deadline to propose the standards for this 8-year review period. As explained above, section 111(b)(1)(B) contemplates a two-year period for NSPS promulgation, and, as noted below, the consent decree under which EPA was acting contemplated a two-and-a-half year period for this 8-year review; hence, EPA did not have sufficient time within this rulemaking for proposing and promulgating performance standards for GHG emissions from refineries. The following discussion provides more information regarding the timeline of events for this particular rulemaking's review period.

EPA entered into a consent decree with the Sierra Club and Our Children's Earth Foundation on October 31, 2005, that required EPA to conduct its review of 40 CFR part 60, subpart J and propose revisions by April 30, 2007, and to promulgate a final rule by April 30, 2008. EPA began its review of subpart J and drafted a proposal package. Shortly before EPA sent the proposed rule package to OMB for its review, the U.S. Supreme Court, on April 2, 2007, issued its decision in *Massachusetts v. EPA*, holding that GHG are air pollutants under the CAA, and remanding the case for the Agency to take action consistent with the Court's opinion. Less than one month later, EPA was obligated under the terms of its consent decree to propose revisions to subpart J by April 30, 2007; this proposed rule did not include performance standards for GHG emissions. On August 27, 2007, EPA received comments from Earthjustice asserting that EPA, as part of its 8-year review under section 111(b)(1)(B), must promulgate GHG emissions limits for

petroleum refineries. On September 14, 2007, the *Massachusetts* case was officially remanded to the Agency by the DC Circuit Court of Appeals. Under the terms of the consent decree, EPA was obligated to finalize its subpart J revisions by April 30, 2008. Considering this timeline of events, and the complexities of the issues involved, EPA would not have had sufficient time during this particular 8-year review of subpart J to propose and promulgate GHG performance standards for refineries even if the Agency had deemed such action appropriate. As explained above, the Agency will use the information it gathers through the ANPR for determining what may be appropriate for future rulemakings.

## V. Summary of Cost, Environmental, Energy, and Economic Impacts

### A. What are the impacts for petroleum refinery process units?

We are presenting estimates of the impacts for the final requirements of subpart Ja that change the performance standards for the following: (1) The emission limits for fluid catalytic cracking units, sulfur recovery plants, fluid coking units, fuel gas combustion devices, and process heaters; and (2) the work practice standards for flares and delayed coking units. The final amendments to 40 CFR part 60, subpart J are clarifications to the existing rule and they have no emission reduction impacts. The cost, environmental, and economic impacts presented in this section are expressed as incremental differences between the impacts of petroleum refinery process units complying with the final subpart Ja and the current NSPS requirements of subpart J (*i.e.*, baseline). The impacts are presented for petroleum refinery process units that commence construction, reconstruction, or modification over the next 5 years. The analyses and the documents referenced below can be found in Docket ID No. EPA-HQ-OAR-2007-0011.

In order to determine the incremental costs and emission reductions of this final rule, we first estimated baseline impacts. For new sources, baseline costs and emission reductions were estimated for complying with subpart J; incremental impacts for subpart Ja were estimated as the costs to comply with subpart J subtracted from the costs to comply with final subpart Ja. Sources that are modified or reconstructed over the next 5 years must comply with subpart J in the absence of final subpart Ja. Prior to reconstruction or modification, these sources will either be subject to a consent decree



(equivalent to about 77 percent of the industry by capacity), complying with subpart J or equivalent limits, and/or complying with 40 CFR part 63, subpart UUU (MACT II). Baseline costs and emission reductions were estimated as the effort needed to comply with subpart J from one of those three starting points. The costs and emission reductions to comply with final subpart Ja were estimated from those starting points as well. For further detail on the methodology of these calculations, see

Docket ID No. EPA-HQ-OAR-2007-0011.

When considering and selecting emission limits for the final rule, we evaluated the cost-effectiveness of each option for new sources separately from reconstructed and modified sources. In most cases, our selections for each process unit and pollutant were consistent for modified and reconstructed units and new units. In this section, we are presenting our costs and emission reductions for the overall rule. We estimate that the final

amendments will reduce emissions of PM by 1,300 tons/yr, SO<sub>2</sub> by 17,000 tons/yr, NO<sub>x</sub> by 11,000 tons/yr, and VOC by 200 tons/yr from the baseline. The estimated increase in annual cost, including annualized capital costs, is about \$31 million (2006 dollars). The overall cost-effectiveness is about \$1,070 per ton of combined pollutants removed. The estimated nationwide 5-year incremental emissions reductions and cost impacts for the final standards are summarized in Table 19 of this preamble.

TABLE 19.—NATIONAL INCREMENTAL EMISSION REDUCTIONS AND COST IMPACTS FOR PETROLEUM REFINERY UNITS SUBJECT TO FINAL STANDARDS UNDER 40 CFR PART 60, SUBPART JA (FIFTH YEAR AFTER PROPOSAL)

Process unit	Total capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Annual emission reductions (tons PM/yr)	Annual emission reductions (tons SO <sub>2</sub> /yr)	Annual emission reductions (tons NO <sub>x</sub> /yr)	Annual emission reductions (tons VOC/yr)	Cost effectiveness (\$/ton)
FCCU .....	8,500	6,400	240	4,300	2,600	.....	890
FCU .....	14,000	4,000	1,000	5,900	660	.....	530
SRP .....	1,700	730	.....	420	.....	.....	1,700
Fuel gas combustion devices .....	34,000	12,000	.....	5,200	.....	.....	2,300
Process heaters .....	23,000	12,000	.....	.....	7,500	.....	1,600
Flaring .....	40,000	-7,000	.....	80	6	200	-23,000
Delayed coking units ....	17,000	1,600	.....	440	.....	25	3,400
Sulfur pits .....	8,300	1,000	.....	300	.....	.....	3,400
<b>Total .....</b>	<b>150,000</b>	<b>31,100</b>	<b>1,300</b>	<b>17,000</b>	<b>11,000</b>	<b>1,400</b>	<b>1,070</b>

*B. What are the secondary impacts?*

Indirect or secondary air quality impacts of this final rule will result from the increased electricity usage associated with the operation of control devices. If plants purchase electricity from a power plant, we estimate that the final standards will increase secondary emissions of criteria pollutants, including PM, SO<sub>2</sub>, NO<sub>x</sub>, and CO from power plants. For new, modified or reconstructed sources, this final rule will increase secondary PM emissions by 56 Megagrams per year (Mg/yr) (62 tons/yr); secondary SO<sub>2</sub> emissions by about 1,400 Mg/yr (1,500 tons/yr); and secondary NO<sub>x</sub> emissions by about 530 Mg/yr (580 tons/yr) for the 5 years following proposal.

As explained earlier, we expect that affected facilities will control emissions from fluid catalytic cracking units by installing and operating ESP or wet gas scrubbers. We also expect that the emissions from the affected FCU will be controlled with a wet scrubber. For these process units, we estimated solid waste impacts for both types of control devices and water impacts for wet gas scrubbers. In addition, the controls needed by small sulfur recovery plants will generate condensate. We project that this final rule will generate 1.6 billion gallons of water per year for the

5 years following proposal. We also estimate that this final rule will generate 2,200 Mg/yr (2,400 tons/yr) of solid waste over those 5 years.

Energy impacts as defined in this preamble section consist of the electricity and steam needed to operate control devices and other equipment that would be required under the final rule. Our estimate of the increased energy demand includes the electricity needed to produce the required amounts of steam as well as direct electricity demand. We project that this final rule will increase overall energy demand by about 410 gigawatt-hours per year (1,400 billion British thermal units per year). An analysis of energy impacts that accounts for reactions in affected markets to the costs of this final rule can be found in the section on Executive Order 13211 found later in this preamble.

*C. What are the economic impacts?*

Our economic impact analysis estimated the impacts on product price and output that the final NSPS would have on five petroleum products—motor gasoline, jet fuel, distillate fuel oil, residual fuel oil, and liquefied petroleum gases. This analysis estimates in the fifth year after proposal that the price of these petroleum products will

increase less than 0.01 percent nationally along with a corresponding reduction in output of less than 0.01 percent. The overall total annual social costs, which reflect changes in consumer and producer behavior in response to the compliance costs, are \$27 million (\$2006) in the fifth year after proposal or almost identical to the compliance costs incurred by affected producers of these petroleum products.

For more information, please refer to the regulatory impact analysis (RIA) that is in the docket for this final rule.

*D. What are the benefits?*

We estimate the monetized benefits of this final rule to be \$220 million to \$1.9 billion (2006\$) in the fifth year after proposal. We base the benefits estimate derived from the PM<sub>2.5</sub> and PM<sub>2.5</sub> precursor emission reductions on the approach and methodology laid out in the Technical Support Document that accompanied the recently completed Regulatory Impact Analysis (RIA) for the revision to the National Ambient Air Quality Standard for Ground-level Ozone (NAAQS), March 2008. We generated estimates that represent the total monetized human health benefits (the sum of premature mortality and premature morbidity) of reducing one ton of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursor

emissions. A summary of the range of benefits estimates at discount rates of 3% and 7% is in Table 20 of this preamble.

TABLE 20.—SUMMARY OF THE RANGE OF BENEFITS ESTIMATES FOR FINAL REFINERIES NSPS

Pollutant	Monetized benefits per ton emission reduction (3% discount)	Monetized benefits per ton emission reduction (7% discount)	Emission reductions (tons)	Total monetized benefits (millions of 2006 dollars, 3% discount) <sup>1</sup>	Total monetized benefits (millions of 2006 dollars, 7% discount) <sup>1</sup>
Direct PM <sub>2.5</sub> .....	\$68,000 to \$570,000.	\$63,000 to \$520,000.	1,054	\$72 to \$600 .....	\$66 to \$540.
PM <sub>2.5</sub> Precursor:					
SO <sub>2</sub> .....	\$8,000 to \$68,000	\$7,400 to \$62,000	16,714	\$130 to \$1,100 .....	\$120 to \$1,000.
NO <sub>x</sub> .....	\$1,300 to \$11,000	\$1,200 to \$9,600 ...	10,786	\$14 to \$110 .....	\$13 to \$100.
VOC .....	\$210 to \$1,700 .....	\$190 to \$1,500 .....	230	\$0.05 to \$0.38 .....	\$0.04 to \$0.35.
			Grand total	\$220 to \$1,900 .....	\$200 to \$1,700.

<sup>1</sup> All estimates are for the analysis year (fifth year after proposal, 2012), and are rounded to two significant figures so numbers may not sum across columns. Emission reductions reflect the combination of selected options for both new and reconstructed/modified sources. The PM<sub>2.5</sub> fraction of total PM emissions is estimated at 83.3%, and only the reduction in the PM<sub>2.5</sub> fraction is monetized in this analysis. All fine particles are assumed to have equivalent health effects, but the benefit per ton estimates vary because each ton of precursor reduced has a different propensity to become PM<sub>2.5</sub>. The monetized benefits incorporate the conversion from precursor emissions to ambient fine particles.

The specific estimates of benefits per ton of pollutant reductions included in this analysis are largely driven by the concentration response function for premature mortality, which is based on the PM Expert Elicitation study (Industrial Economics, Inc., September 2006. *Expanded Expert Judgment Assessment of the Concentration-Response Relationship Between PM<sub>2.5</sub> Exposure and Mortality*. Prepared for the U.S. EPA, Office of Air Quality Planning and Standards). The preamble for the proposal indicated that EPA would update the benefits estimates to incorporate the results of the expert elicitation for the final rule, and we have done so. The range of benefits estimates presented above represents the range from the lowest expert estimate to the highest expert estimate to characterize the uncertainty in the concentration response function. To generate the benefit-per-ton estimates, we used a model to convert emissions of direct PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors into changes in PM<sub>2.5</sub> air quality and another model to estimate the changes in human health based on that change in air quality. Finally, the monetized health benefits were divided by the emission reductions to create the benefit-per-ton estimates. Even though all fine particles are assumed to have equivalent health effects, the benefit-per-ton estimates vary because each ton of precursor reduced has a different propensity to become PM<sub>2.5</sub>. For example, NO<sub>x</sub> has a lower benefit-per-ton estimate than direct PM<sub>2.5</sub> because it does not form as much PM<sub>2.5</sub>, thus the exposure would be lower, and the monetized health benefits would be lower.

This analysis does not include the type of detailed uncertainty assessment found in the PM NAAQS RIA because we lack the necessary air quality input

and monitoring data to run the benefits model. However, the 2006 PM NAAQS analysis provides an indication of the sensitivity of our results to the use of alternative concentration response functions, including those derived from the PM expert elicitation study.

The annualized costs of this rulemaking are estimated at \$31 million (2006 dollars) in the fifth year after proposal, and the benefits are estimated at \$220 million to \$1.9 billion (2006 dollars) for that same year. Thus, net benefits of this rulemaking are estimated at \$190 million to \$1.8 billion (2006 dollars). EPA believes that the benefits are likely to exceed the costs by a significant margin even when taking into account the uncertainties in the cost and benefit estimates. It should be noted that the range of benefits estimates provided above does not include ozone-related benefits from the reductions in VOC and NO<sub>x</sub> emissions expected to occur as a result of this final rule, nor does this range include benefits from the portion of total PM emissions reduction that is not PM<sub>2.5</sub>. We do not have sufficient information or modeling available to provide such estimates for this rulemaking. For more information, please refer to the RIA for this final rule that is available in the docket.

**VI. Statutory and Executive Order Reviews**

*A. Executive Order 12866: Regulatory Planning and Review*

Under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is an “economically significant regulatory action” because it is likely to have an annual effect on the economy of \$100 million or more. Accordingly, EPA submitted this action

to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the RIA for the Final Petroleum Refinery NSPS. A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here. The monetized benefits of this action are estimated as a range from \$220 million to \$1.9 billion (2006 dollars), and the annualized costs of this action are \$31.1 million (2006 dollars). We also estimated the economic impacts, small business impacts, and energy impacts associated with this action. These analyses are included in the RIA and are summarized elsewhere in this preamble.

*B. Paperwork Reduction Act*

The final amendments to the standards of performance for petroleum refineries (40 CFR part 60, subpart J) do not impose any new information collection burden. The final amendments add a monitoring exemption for fuel gas streams combusted in a fuel gas combustion device that are inherently low in sulfur content. The exemption applies to fuel gas streams that meet specified criteria or that the owner or operator demonstrates are low sulfur according to the rule requirements. The owner or operator is required to submit a written application for the exemption containing information needed to document the low sulfur content. The application is not a mandatory requirement and the incremental reduction in monitoring burden that

will occur as a result of the exemption is not significant compared to the baseline burden estimates for the existing rule. Therefore, we have not revised the information collection request (ICR) for the existing rule. However, OMB has previously approved the information collection requirements in the existing rule (40 CFR part 60, subpart J) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060-0022, EPA ICR number 1054.09. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

The information collection requirements in the final standards of performance for petroleum refineries (40 CFR part 60, subpart Ja) have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information collection requirements in this final rule are needed by the Agency to determine compliance with the standards. These requirements are based on recordkeeping and reporting requirements in the NSPS General Provisions in 40 CFR part 60, subpart A, and on specific requirements in subpart J or subpart Ja which are mandatory for all operators subject to new source performance standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The final standards of performance for petroleum refineries include work practice requirements for delayed coking reactor vessel depressuring and written plans to minimize emissions from flares. Plants also are required to analyze the cause of any exceedance that releases more than 500 pounds per day of SO<sub>2</sub> from an affected fuel gas combustion device. The final standards also include testing, monitoring, recordkeeping, and reporting provisions. Monitoring requirements include control device operating parameters, bag leak detection systems, or CEMS, depending on the type of process, pollutant, and control device. Exemptions are also included for small emitters.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 5,340 labor-hours per year at a cost

of \$481,249 per year. The annualized capital costs are estimated at \$2,052,000 per year and operation and maintenance costs are estimated at \$1,117,440 per year. We note that the capital costs as well as the operation and maintenance costs are for the continuous monitors; these costs are also included in the cost impacts presented in section V.A of this preamble. Therefore, the burden costs associated with the continuous monitors presented in the ICR are not additional costs incurred by affected sources subject to final subpart Ja. Burden is defined at 5 CFR 1320.3(b).

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 are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

#### C. Regulatory Flexibility Act

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

For purposes of assessing the impact of this final action on small entities, small entity is defined as: (1) A small business whose parent company has no more than 1,500 employees, depending on the size definition for the affected NAICS code (as defined by Small Business Administration (SBA) size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by the current standards of performance for petroleum refineries are small refineries.

After reviewing the small business analysis for the proposed NSPS, we realized that we inadvertently used the capacity limit of 125,000 barrels/day production as part of the small business size standard to evaluate the impacts on small refiners; the definition that should have been used is 1,500 employees for an ultimate parent entity with no capacity limit in the United States. The effect of this change in the small business size standard for this analysis is one additional small refiner. This change in the small business size standard does not lead to any effect on the certification that there is no significant economic impact on a substantial number of small entities resulting from today's action. We have determined that, of the 58 entities that are in the affected industry, 25 of these (or 43 percent) are classified as small according to the SBA small business size standard listed previously. Of these 25 affected entities, three are expected to be affected by today's action. None of these three small entities is expected to incur an annualized compliance cost of more than 1.0 percent to comply with this final action. For more information, please refer to the economic impact analysis that is in the public docket for this rulemaking.

Although this final action will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this final action on small entities by incorporating specific standards for small sulfur recovery plants and streamlining procedures for exempting inherently low-sulfur fuel gases from continuous monitoring.

#### D. Unfunded Mandates Reform Act

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

205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this final action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. As discussed earlier in this preamble, the estimated expenditures for the private sector in the fifth year after proposal are an annualized cost of \$31.1 million (2006 dollars). Thus, this final action is not subject to the requirements of section 202 and 205 of the UMRA. In addition, EPA has determined that this final action contains no regulatory requirements that might significantly or uniquely affect small governments. This final action contains no requirements that apply to such governments, imposes no obligations upon them, and would not result in expenditures by them of \$100 million or more in any one year or any disproportionate impacts on them. Therefore, this final action is not subject to the requirements of section 203 of the UMRA.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This final action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to this final action.

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

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This final action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The final rules impose requirements on owners and operators of specified industrial facilities and not tribal governments. Thus, Executive Order 13175 does not apply to this final action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We prepared an analysis of the impacts on energy markets as part of our RIA for this final action. This analysis accounts

for the increase in electricity generation occurring due to additional control requirements associated with this final action. Our analysis shows that there is a reduction in gasoline output of less than 0.75 million gallons per year, or less than 50 barrels of gasoline production per day in the fifth year after proposal of this final action. In addition, our analysis shows that there is no increase in gasoline prices in the fifth year after proposal of this final action. With no increase in domestic gasoline prices, no significant increase in our dependence on foreign energy supplies should take place. Finally, this final action will have no adverse effect on crude oil supply, coal production, electricity production, and energy distribution. Further, we conclude that this final action is not likely to have any adverse energy effects. For more information on this analysis, please refer to the RIA available in the docket for this rulemaking.

#### *I. National Technology Transfer and Advancement Act*

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

This rulemaking involves technical standards. EPA has decided to use the VCS ANSI/ASME PTC 19.10–1981, “Flue and Exhaust Gas Analyses,” for its manual methods of measuring the content of the exhaust gas. These parts of ANSI/ASME PTC 19.10–1981 are acceptable alternatives to EPA Methods 3B, 6, 6A, 7, 7C, and 15A. This standard is available from the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990.

The EPA has also decided to use EPA methods 1, 2, 3, 3A, 3B, 5, 5B, 5F, 5I, 6, 6A, 6C, 7, 7A, 7C, 7D, 7E, 10, 10A, 10B, 11, 15, 15A, 16, and 17 (40 CFR part 60, Appendices A–1 through A6); Performance Specifications 1, 2, 3, 4, 4A, 5, 7, and 11 (40 CFR part 60, Appendix B); quality assurance procedures in 40 CFR part 60, Appendix F; and the Gas Processors Association Standard 2377–86, “Test for Hydrogen

Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes,” 1986 Revision. While the Agency has identified 22 VCS as being potentially applicable to this rule, we have decided not to use these VCS in this rulemaking. The use of these VCS would have been impractical because they do not meet the objectives of the standards cited in this rule. See the docket for this rule for the reasons for these determinations.

Under 40 CFR 60.13(i) of the NSPS General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule and amendments.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that these final amendments to 40 CFR part 60, subpart J will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they do not affect the level of protection provided to human health or the environment. The final amendments are clarifications which do not relax the control measures on sources regulated by the rule and, therefore, will not cause emissions increases from these sources.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The EPA will submit a report containing these final rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rules in the

**Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This final rule will be effective on June 24, 2008.

**List of Subjects in 40 CFR Part 60**

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporations by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 30, 2008.

**Stephen L. Johnson,**  
*Administrator.*

■ For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

**PART 60—[AMENDED]**

■ 1. The authority citation for part 60 continues to read as follows:

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

**Subpart A—[Amended]**

- 2. Section 60.17 is amended by:
  - a. Revising paragraph (h)(4),
  - b. Revising the last sentence of paragraph (m) introductory text, and
  - c. Revising paragraph (m)(1) to read as follows:

**§ 60.17 Incorporations by reference.**

\* \* \* \* \*

(h) \* \* \*

(4) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], IBR approved for § 60.106(e)(2) of subpart J, §§ 60.104a(d)(3), (d)(5), (d)(6), (h)(3), (h)(4), (h)(5), (i)(3), (i)(4), (i)(5), (j)(3), and (j)(4), 60.105a(d)(4), (f)(2), (f)(4), (g)(2), and (g)(4), 60.106a(a)(1)(iii), (a)(2)(iii), (a)(2)(v), (a)(2)(viii), (a)(3)(ii), and (a)(3)(v), and 60.107a(a)(1)(ii), (a)(1)(iv), (a)(2)(ii), (c)(2), (c)(4), and (d)(2) of subpart Ja, Tables 1 and 3 of subpart EEEE, Tables 2 and 4 of subpart FFFF, Table 2 of subpart JJJJ, and §§ 60.4415(a)(2) and 60.4415(a)(3) of subpart KKKK of this part.

\* \* \* \* \*

(m) \* \* \* You may inspect a copy at EPA’s Air and Radiation Docket and Information Center, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460.

(1) Gas Processors Association Standard 2377–86, Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes, 1986 Revision, IBR approved for §§ 60.105(b)(1)(iv), 60.107a(b)(1)(iv),

60.334(h)(1), 60.4360, and 60.4415(a)(1)(ii).

\* \* \* \* \*

**Subpart J—[Amended]**

■ 3. Section 60.100 is amended by revising the first sentence in paragraph (a) and revising paragraphs (b) through (d) to read as follows:

**§ 60.100 Applicability, designation of affected facility, and reconstruction.**

(a) The provisions of this subpart are applicable to the following affected facilities in petroleum refineries: fluid catalytic cracking unit catalyst regenerators, fuel gas combustion devices, and all Claus sulfur recovery plants except Claus plants with a design capacity for sulfur feed of 20 long tons per day (LTD) or less. \* \* \*

(b) Any fluid catalytic cracking unit catalyst regenerator or fuel gas combustion device under paragraph (a) of this section other than a flare as defined in § 60.101a which commences construction, reconstruction, or modification after June 11, 1973, and on or before May 14, 2007, or any fuel gas combustion device under paragraph (a) of this section that meets the definition of a flare as defined in § 60.101a which commences construction, reconstruction, or modification after June 11, 1973, and on or before June 24, 2008, or any Claus sulfur recovery plant under paragraph (a) of this section which commences construction, reconstruction, or modification after October 4, 1976, and on or before May 14, 2007, is subject to the requirements of this subpart except as provided under paragraphs (c) and (d) of this section.

(c) Any fluid catalytic cracking unit catalyst regenerator under paragraph (b) of this section which commences construction, reconstruction, or modification on or before January 17, 1984, is exempted from § 60.104(b).

(d) Any fluid catalytic cracking unit in which a contact material reacts with petroleum derivatives to improve feedstock quality and in which the contact material is regenerated by burning off coke and/or other deposits and that commences construction, reconstruction, or modification on or before January 17, 1984, is exempt from this subpart.

\* \* \* \* \*

■ 4. Section 60.101 is amended by revising paragraph (d) to read as follows:

**§ 60.101 Definitions.**

\* \* \* \* \*

(d) *Fuel gas* means any gas which is generated at a petroleum refinery and

which is combusted. Fuel gas also includes natural gas when the natural gas is combined and combusted in any proportion with a gas generated at a refinery. Fuel gas does not include gases generated by catalytic cracking unit catalyst regenerators and fluid coking burners. Fuel gas does not include vapors that are collected and combusted to comply with the wastewater provisions in § 60.692, 40 CFR 61.343 through 61.348, or 40 CFR 63.647, or the marine tank vessel loading provisions in 40 CFR 63.562 or 40 CFR 63.651.

\* \* \* \* \*

■ 5. Section 60.102 is amended by revising paragraph (b) to read as follows:

§ 60.102 Standard for particulate matter.

\* \* \* \* \*

(b) Where the gases discharged by the fluid catalytic cracking unit catalyst regenerator pass through an incinerator or waste heat boiler in which auxiliary or supplemental liquid or solid fossil fuel is burned, particulate matter in excess of that permitted by paragraph (a)(1) of this section may be emitted to the atmosphere, except that the incremental rate of particulate matter emissions shall not exceed 43 grams per Gigajoule (g/GJ) (0.10 lb/million British thermal units (Btu)) of heat input attributable to such liquid or solid fossil fuel.

■ 6. Section 60.104 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 60.104 Standards for sulfur oxides.

\* \* \* \* \*

(b) \* \* \*

(1) With an add-on control device, reduce SO<sub>2</sub> emissions to the atmosphere by 90 percent or maintain SO<sub>2</sub> emissions to the atmosphere less than or equal to 50 ppm by volume (ppmv), whichever is less stringent; or

(2) Without the use of an add-on control device to reduce SO<sub>2</sub> emissions, maintain sulfur oxides emissions calculated as SO<sub>2</sub> to the atmosphere less than or equal to 9.8 kg/Mg (20 lb/ton) coke burn-off; or

\* \* \* \* \*

■ 7. Section 60.105 is amended by:

- a. Revising the first sentence of paragraph (a)(3) introductory text;
- b. Revising paragraph (a)(3)(iv);
- c. Revising paragraph (a)(4) introductory text;
- d. Adding paragraph (a)(4)(iv);
- e. Revising paragraph (a)(8) introductory text;
- f. Revising paragraph (a)(8)(i); and
- g. Adding paragraph (b) to read as follows:

§ 60.105 Monitoring of emissions and operations.

(a) \* \* \*

(3) For fuel gas combustion devices subject to § 60.104(a)(1), either an instrument for continuously monitoring and recording the concentration by volume (dry basis, zero percent excess air) of SO<sub>2</sub> emissions into the atmosphere or monitoring as provided in paragraph (a)(4) of this section. \* \* \*

\* \* \* \* \*

(iv) Fuel gas combustion devices having a common source of fuel gas may be monitored at only one location (i.e., after one of the combustion devices), if monitoring at this location accurately represents the SO<sub>2</sub> emissions into the atmosphere from each of the combustion devices.

(4) Instead of the SO<sub>2</sub> monitor in paragraph (a)(3) of this section for fuel gas combustion devices subject to § 60.104(a)(1), an instrument for continuously monitoring and recording the concentration (dry basis) of H<sub>2</sub>S in fuel gases before being burned in any fuel gas combustion device.

\* \* \* \* \*

(iv) The owner or operator of a fuel gas combustion device is not required to comply with paragraph (a)(3) or (4) of this section for fuel gas streams that are exempt under § 60.104(a)(1) and fuel gas streams combusted in a fuel gas combustion device that are inherently low in sulfur content. Fuel gas streams meeting one of the requirements in paragraphs (a)(4)(iv)(A) through (D) of this section will be considered inherently low in sulfur content. If the composition of a fuel gas stream changes such that it is no longer exempt under § 60.104(a)(1) or it no longer meets one of the requirements in paragraphs (a)(4)(iv)(A) through (D) of this section, the owner or operator must begin continuous monitoring under paragraph (a)(3) or (4) of this section within 15 days of the change.

(A) Pilot gas for heaters and flares.

(B) Fuel gas streams that meet a commercial-grade product specification for sulfur content of 30 ppmv or less. In the case of a liquefied petroleum gas (LPG) product specification in the pressurized liquid state, the gas phase sulfur content should be evaluated assuming complete vaporization of the LPG and sulfur containing-compounds at the product specification concentration.

(C) Fuel gas streams produced in process units that are intolerant to sulfur contamination, such as fuel gas streams produced in the hydrogen plant, the catalytic reforming unit, the

isomerization unit, and HF alkylation process units.

(D) Other fuel gas streams that an owner or operator demonstrates are low-sulfur according to the procedures in paragraph (b) of this section.

\* \* \* \* \*

(8) An instrument for continuously monitoring and recording concentrations of SO<sub>2</sub> in the gases at both the inlet and outlet of the SO<sub>2</sub> control device from any fluid catalytic cracking unit catalyst regenerator for which the owner or operator seeks to comply specifically with the 90 percent reduction option under § 60.104(b)(1).

(i) The span value of the inlet monitor shall be set at 125 percent of the maximum estimated hourly potential SO<sub>2</sub> emission concentration entering the control device, and the span value of the outlet monitor shall be set at 50 percent of the maximum estimated hourly potential SO<sub>2</sub> emission concentration entering the control device.

\* \* \* \* \*

(b) An owner or operator may demonstrate that a fuel gas stream combusted in a fuel gas combustion device subject to § 60.104(a)(1) that is not specifically exempted in § 60.105(a)(4)(iv) is inherently low in sulfur. A fuel gas stream that is determined to be low-sulfur is exempt from the monitoring requirements in paragraphs (a)(3) and (4) of this section until there are changes in operating conditions or stream composition.

(1) The owner or operator shall submit to the Administrator a written application for an exemption from monitoring. The application must contain the following information:

(i) A description of the fuel gas stream/system to be considered, including submission of a portion of the appropriate piping diagrams indicating the boundaries of the fuel gas stream/system, and the affected fuel gas combustion device(s) to be considered;

(ii) A statement that there are no crossover or entry points for sour gas (high H<sub>2</sub>S content) to be introduced into the fuel gas stream/system (this should be shown in the piping diagrams);

(iii) An explanation of the conditions that ensure low amounts of sulfur in the fuel gas stream (i.e., control equipment or product specifications) at all times;

(iv) The supporting test results from sampling the requested fuel gas stream/system demonstrating that the sulfur content is less than 5 ppmv. Sampling data must include, at minimum, 2 weeks of daily monitoring (14 grab samples) for frequently operated fuel gas streams/systems; for infrequently operated fuel gas streams/systems,

seven grab samples must be collected unless other additional information would support reduced sampling. The owner or operator shall use detector tubes ("length-of-stain tube" type measurement) following the "Gas Processors Association Standard 2377-86, Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes," 1986 Revision (incorporated by reference—see § 60.17), with ranges 0-10/0-100 ppm (N = 10/1) to test the applicant fuel gas stream for H<sub>2</sub>S; and

(v) A description of how the 2 weeks (or seven samples for infrequently operated fuel gas streams/systems) of monitoring results compares to the typical range of H<sub>2</sub>S concentration (fuel quality) expected for the fuel gas stream/system going to the affected fuel gas combustion device (e.g., the 2 weeks of daily detector tube results for a frequently operated loading rack included the entire range of products loaded out, and, therefore, should be representative of typical operating conditions affecting H<sub>2</sub>S content in the fuel gas stream going to the loading rack flare).

(2) The effective date of the exemption is the date of submission of the information required in paragraph (b)(1) of this section.

(3) No further action is required unless refinery operating conditions change in such a way that affects the exempt fuel gas stream/system (e.g., the stream composition changes). If such a change occurs, the owner or operator will follow the procedures in paragraph (b)(3)(i), (b)(3)(ii), or (b)(3)(iii) of this section.

(i) If the operation change results in a sulfur content that is still within the range of concentrations included in the original application, the owner or operator shall conduct an H<sub>2</sub>S test on a grab sample and record the results as proof that the concentration is still within the range.

(ii) If the operation change results in a sulfur content that is outside the range of concentrations included in the original application, the owner or operator may submit new information following the procedures of paragraph (b)(1) of this section within 60 days (or within 30 days after the seventh grab sample is tested for infrequently operated process units).

(iii) If the operation change results in a sulfur content that is outside the range of concentrations included in the original application and the owner or operator chooses not to submit new information to support an exemption, the owner or operator must begin H<sub>2</sub>S monitoring using daily stain sampling to

demonstrate compliance. The owner or operator must begin monitoring according to the requirements in paragraphs (a)(1) or (a)(2) of this section as soon as practicable but in no case later than 180 days after the operation change. During daily stain tube sampling, a daily sample exceeding 162 ppmv is an exceedance of the 3-hour H<sub>2</sub>S concentration limit. The owner or operator must determine a rolling 365-day average using the stain sampling results; an average H<sub>2</sub>S concentration of 5 ppmv must be used for days prior to the operation change.

■ 8. Section 60.106 is amended by revising paragraph (b)(3) introductory text and revising the first sentence of paragraph (e)(2) to read as follows:

**§ 60.106 Test methods and procedures.**

(b) \* \* \*  
(3) The coke burn-off rate (R<sub>c</sub>) shall be computed for each run using the following equation:  
 $R_c = K_1 Q_r (\%CO_2 + \%CO) + K_2 Q_a - K_3 Q_{oxy}$   
(%CO/2 + %CO<sub>2</sub> + %O<sub>2</sub>) + K<sub>3</sub>Q<sub>oxy</sub>  
(%O<sub>oxy</sub>)

- Where:  
R<sub>c</sub> = Coke burn-off rate, kilograms per hour (kg/hr) (lb/hr).  
Q<sub>r</sub> = Volumetric flow rate of exhaust gas from fluid catalytic cracking unit regenerator before entering the emission control system, dscm/min (dscf/min).  
Q<sub>a</sub> = Volumetric flow rate of air to fluid catalytic cracking unit regenerator, as determined from the fluid catalytic cracking unit control room instrumentation, dscm/min (dscf/min).  
Q<sub>oxy</sub> = Volumetric flow rate of O<sub>2</sub> enriched air to fluid catalytic cracking unit regenerator, as determined from the fluid catalytic cracking unit control room instrumentation, dscm/min (dscf/min).  
%CO<sub>2</sub> = Carbon dioxide concentration in fluid catalytic cracking unit regenerator exhaust, percent by volume (dry basis).  
%CO = CO concentration in FCCU regenerator exhaust, percent by volume (dry basis).  
%O<sub>2</sub> = O<sub>2</sub> concentration in fluid catalytic cracking unit regenerator exhaust, percent by volume (dry basis).  
%O<sub>oxy</sub> = O<sub>2</sub> concentration in O<sub>2</sub> enriched air stream inlet to the fluid catalytic cracking unit regenerator, percent by volume (dry basis).

- K<sub>1</sub> = Material balance and conversion factor, 0.2982 (kg-min)/(hr-dscm-%) [0.0186 (lb-min)/(hr-dscf-%)].  
K<sub>2</sub> = Material balance and conversion factor, 2.088 (kg-min)/(hr-dscm) [0.1303 (lb-min)/(hr-dscf)].  
K<sub>3</sub> = Material balance and conversion factor, 0.0994 (kg-min)/(hr-dscm-%) [0.00624 (lb-min)/(hr-dscf-%)].

(2) Where emissions are monitored by § 60.105(a)(3), compliance with § 60.104(a)(1) shall be determined using Method 6 or 6C and Method 3 or 3A. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6. \* \* \*

- 9. Section 60.107 is amended by:  
■ a. Revising the first sentence of paragraph (c)(1)(i);  
■ b. Redesignating paragraphs (e) and (f) as (f) and (g); and  
■ c. Adding paragraph (e) to read as follows:

**§ 60.107 Reporting and recordkeeping requirements.**

(c) \* \* \*  
(1) \* \* \*  
(i) The average percent reduction and average concentration of sulfur dioxide on a dry, O<sub>2</sub>-free basis in the gases discharged to the atmosphere from any fluid cracking unit catalyst regenerator for which the owner or operator seeks to comply with § 60.104(b)(1) is below 90 percent and above 50 ppmv, as measured by the continuous monitoring system prescribed under § 60.105(a)(8), or above 50 ppmv, as measured by the outlet continuous monitoring system prescribed under § 60.105(a)(9). \* \* \*

(e) For each fuel gas stream combusted in a fuel gas combustion device subject to § 60.104(a)(1), if an owner or operator determines that one of the exemptions listed in § 60.105(a)(4)(iv) applies to that fuel gas stream, the owner or operator shall maintain records of the specific exemption chosen for each fuel gas stream. If the owner or operator applies for the exemption described in § 60.105(a)(4)(iv)(D), the owner or operator must keep a copy of the application as well as the letter from the Administrator granting approval of the application. \* \* \*

- 10. Section 60.108 is amended by revising the last sentence of paragraph (e) to read as follows:

**§ 60.108 Performance test and compliance provisions.**

(e) \* \* \* The owner or operator shall furnish the Administrator with a written notification of the change in the semiannual report required by § 60.107(f).  
■ 11. Part 60 is amended by adding subpart Ja to read as follows:

**Subpart Ja—Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007**

- Sec.
- 60.100a Applicability, designation of affected facility, and reconstruction.
- 60.101a Definitions.
- 60.102a Emissions limitations.
- 60.103a Work practice standards.
- 60.104a Performance tests.
- 60.105a Monitoring of emissions and operations for fluid catalytic cracking units (FCCU) and fluid coking units (FCU).
- 60.106a Monitoring of emissions and operations for sulfur recovery plants.
- 60.107a Monitoring of emissions and operations for process heaters and other fuel gas combustion devices.
- 60.108a Recordkeeping and reporting requirements.
- 60.109a Delegation of authority.

**Subpart Ja—Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007**

**§ 60.100a Applicability, designation of affected facility, and reconstruction.**

(a) The provisions of this subpart apply to the following affected facilities in petroleum refineries: fluid catalytic cracking units (FCCU), fluid coking units (FCU), delayed coking units, fuel gas combustion devices, including flares and process heaters, and sulfur recovery plants. The sulfur recovery plant need not be physically located within the boundaries of a petroleum refinery to be an affected facility, provided it processes gases produced within a petroleum refinery.

(b) Except for flares, the provisions of this subpart apply only to affected facilities under paragraph (a) of this section which commence construction, modification, or reconstruction after May 14, 2007. For flares, the provisions of this subpart apply only to flares which commence construction, modification, or reconstruction, after June 24, 2008.

(c) For the purposes of this subpart, under § 60.14, a modification to a flare occurs if:

(1) Any new piping from a refinery process unit or fuel gas system is physically connected to the flare (e.g., for direct emergency relief or some form of continuous or intermittent venting); or

(2) A flare is physically altered to increase the flow capacity of the flare.

(d) For purposes of this subpart, under § 60.15, the “fixed capital cost of the new components” includes the fixed capital cost of all depreciable

components which are or will be replaced pursuant to all continuous programs of component replacement which are commenced within any 2-year period following May 14, 2007. For purposes of this paragraph, “commenced” means that an owner or operator has undertaken a continuous program of component replacement or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of component replacement.

**§ 60.101a Definitions.**

Terms used in this subpart are defined in the Clean Air Act, in § 60.2, and in this section.

*Coke burn-off* means the coke removed from the surface of the FCCU catalyst by combustion in the catalyst regenerator. The rate of coke burn-off is calculated by the formula specified in § 60.104a.

*Contact material* means any substance formulated to remove metals, sulfur, nitrogen, or any other contaminant from petroleum derivatives.

*Delayed coking unit* means one or more refinery process units in which high molecular weight petroleum derivatives are thermally cracked and petroleum coke is produced in a series of closed, batch system reactors.

*Flare* means an open-flame fuel gas combustion device used for burning off unwanted gas or flammable gas and liquids. The flare includes the foundation, flare tip, structural support, burner, igniter, flare controls including air injection or steam injection systems, flame arrestors, knockout pots, piping and header systems.

*Flexicoking unit* means one or more refinery process units in which high molecular weight petroleum derivatives are thermally cracked and petroleum coke is continuously produced and then gasified to produce a synthetic fuel gas.

*Fluid catalytic cracking unit* means a refinery process unit in which petroleum derivatives are continuously charged and hydrocarbon molecules in the presence of a catalyst suspended in a fluidized bed are fractured into smaller molecules, or react with a contact material suspended in a fluidized bed to improve feedstock quality for additional processing and the catalyst or contact material is continuously regenerated by burning off coke and other deposits. The unit includes the riser, reactor, regenerator, air blowers, spent catalyst or contact material stripper, catalyst or contact material recovery equipment, and regenerator equipment for controlling air pollutant emissions and for heat

recovery. When *fluid catalytic cracking unit* regenerator exhaust from two separate fluid catalytic cracking units share a common exhaust treatment (e.g., CO boiler or wet scrubber), the *fluid catalytic cracking unit* is a single affected facility.

*Fluid coking unit* means one or more refinery process units in which high molecular weight petroleum derivatives are thermally cracked and petroleum coke is continuously produced in a fluidized bed system. The *fluid coking unit* includes equipment for controlling air pollutant emissions and for heat recovery on the fluid coking burner exhaust vent.

*Fuel gas* means any gas which is generated at a petroleum refinery and which is combusted. *Fuel gas* includes natural gas when the natural gas is combined and combusted in any proportion with a gas generated at a refinery. *Fuel gas* does not include gases generated by catalytic cracking unit catalyst regenerators and fluid coking burners, but does include gases from flexicoking unit gasifiers. *Fuel gas* does not include vapors that are collected and combusted to comply with the wastewater provisions in § 60.692, 40 CFR 61.343 through 61.348, 40 CFR 63.647, or the marine tank vessel loading provisions in 40 CFR 63.562 or 40 CFR 63.651.

*Fuel gas combustion device* means any equipment, such as process heaters, boilers, and flares, used to combust fuel gas, except facilities in which gases are combusted to produce sulfur or sulfuric acid.

*Fuel gas system* means a system of compressors, piping, knock-out pots, mix drums, and units used to remove sulfur contaminants from the fuel gas (e.g., amine scrubbers) that collects refinery fuel gas from one or more sources for treatment as necessary prior to combusting in process heaters or boilers. A *fuel gas system* may have an overpressure vent to a flare but the primary purpose for a fuel gas system is to provide fuel to the refinery.

*Oxidation control system* means an emission control system which reduces emissions from sulfur recovery plants by converting these emissions to sulfur dioxide (SO<sub>2</sub>) and recycling the SO<sub>2</sub> to the reactor furnace or the first-stage catalytic reactor of the Claus sulfur recovery plant or converting the SO<sub>2</sub> to a sulfur product.

*Petroleum* means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

*Petroleum refinery* means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt (bitumen)



or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

*Process heater* means an enclosed combustion device used to transfer heat indirectly to process stream materials (liquids, gases, or solids) or to a heat transfer material for use in a process unit instead of steam.

*Process upset gas* means any gas generated by a petroleum refinery process unit as a result of upset or malfunction.

*Reduced sulfur compounds* means hydrogen sulfide (H<sub>2</sub>S), carbonyl sulfide, and carbon disulfide.

*Reduction control system* means an emission control system which reduces emissions from sulfur recovery plants by converting these emissions to H<sub>2</sub>S and either recycling the H<sub>2</sub>S to the reactor furnace or the first-stage catalytic reactor of the Claus sulfur recovery plant or converting the H<sub>2</sub>S to a sulfur product.

*Refinery process unit* means any segment of the petroleum refinery in which a specific processing operation is conducted.

*Sulfur pit* means the storage vessel in which sulfur that is condensed after each Claus catalytic reactor is initially accumulated and stored. A *sulfur pit* does not include secondary sulfur storage vessels downstream of the initial Claus reactor sulfur pits.

*Sulfur recovery plant* means all process units which recover sulfur from HS<sub>2</sub> and/or SO<sub>2</sub> at a petroleum refinery. The *sulfur recovery plant* also includes sulfur pits used to store the recovered sulfur product, but it does not include secondary sulfur storage vessels downstream of the sulfur pits. For example, a Claus sulfur recovery plant includes: Reactor furnace and waste heat boiler, catalytic reactors, sulfur pits, and, if present, oxidation or reduction control systems, or incinerator, thermal oxidizer, or similar combustion device. Multiple sulfur recovery units are a single affected facility only when the units share the same source of sour gas. Sulfur recovery plants that receive source gas from completely segregated sour gas treatment systems are separate affected facilities.

#### § 60.102a Emissions limitations.

(a) Each owner or operator that is subject to the requirements of this subpart shall comply with the emissions limitations in paragraphs (b) through (h) of this section on and after the date on which the initial performance test, required by § 60.8, is completed, but not later than 60 days after achieving the

maximum production rate at which the affected facility will be operated, or 180 days after initial startup, whichever comes first.

(b) An owner or operator subject to the provisions of this subpart shall not discharge or cause the discharge into the atmosphere from any FCCU or FCU:

(1) Particulate matter (PM) in excess of the limits in paragraphs (b)(1)(i), (ii), or (iii) of this section.

(i) 1.0 kilogram per Megagram (kg/Mg) (1 pound (lb) per 1,000 lb) coke burn-off or, if a PM continuous emission monitoring system (CEMS) is used, 0.040 grain per dry standard cubic feet (gr/dscf) corrected to 0 percent excess air for each modified or reconstructed FCCU.

(ii) 0.5 gram per kilogram (g/kg) coke burn-off (0.5 lb PM/1,000 lb coke burn-off) or, if a PM CEMS is used, 0.020 gr/dscf corrected to 0 percent excess air for each newly constructed FCCU.

(iii) 1.0 kg/Mg (1 lb/1,000 lb) coke burn-off; or if a PM CEMS is used, 0.040 grain per dry standard cubic feet (gr/dscf) corrected to 0 percent excess air for each affected FCU.

(2) Nitrogen oxides (NO<sub>x</sub>) in excess of 80 parts per million by volume (ppmv), dry basis corrected to 0 percent excess air, on a 7-day rolling average basis.

(3) Sulfur dioxide (SO<sub>2</sub>) in excess of 50 ppmv dry basis corrected to 0 percent excess air, on a 7-day rolling average basis and 25 ppmv, dry basis corrected to 0 percent excess air, on a 365-day rolling average basis.

(4) Carbon monoxide (CO) in excess of 500 ppmv, dry basis corrected to 0 percent excess air, on an hourly average basis.

(c) The owner or operator of a FCCU or FCU that uses a continuous parameter monitoring system (CPMS) according to § 60.105a(b)(1) shall comply with the applicable control device parameter operating limit in paragraph (c)(1) or (2) of this section.

(1) If the FCCU or FCU is controlled using an electrostatic precipitator:

(i) The 3-hour rolling average total power and secondary current to the entire system must not fall below the level established during the most recent performance test; and

(ii) The daily average exhaust coke burn-off rate must not exceed the level established during the most recent performance test.

(2) If the FCCU or FCU is controlled using a wet scrubber:

(i) The 3-hour rolling average pressure drop must not fall below the level established during the most recent performance test; and

(ii) The 3-hour rolling average liquid-to-gas ratio must not fall below the level

established during the most recent performance test.

(d) If an FCCU or FCU uses a continuous opacity monitoring system (COMS) according to the alternative monitoring option in § 60.105a(e), the 3-hour rolling average opacity of emissions from the FCCU or FCU as measured by the COMS must not exceed the site-specific opacity limit established during the most recent performance test.

(e) The owner or operator of a FCCU or FCU that is exempted from the requirement for a CO continuous emissions monitoring system under § 60.105a(h)(3) shall comply with the parameter operating limits in paragraph (e)(1) or (2) of this section.

(1) For a FCCU or FCU with no post-combustion control device:

(i) The hourly average temperature of the exhaust gases exiting the FCCU or FCU must not fall below the level established during the most recent performance test.

(ii) The hourly average oxygen (O<sub>2</sub>) concentration of the exhaust gases exiting the FCCU or FCU must not fall below the level established during the most recent performance test.

(2) For a FCCU or FCU with a post-combustion control device:

(i) The hourly average temperature of the exhaust gas vent stream exiting the control device must not fall below the level established during the most recent performance test.

(ii) The hourly average O<sub>2</sub> concentration of the exhaust gas vent stream exiting the control device must not fall below the level established during the most recent performance test.

(f) Except as provided in paragraph (f)(3), each owner or operator of an affected sulfur recovery plant shall comply with the applicable emission limits in paragraphs (f)(1) or (2) of this section.

(1) For a sulfur recovery plant with a capacity greater than 20 long tons per day (LTD):

(i) For a sulfur recovery plant with an oxidation control system or a reduction control system followed by incineration, the owner or operator shall not discharge or cause the discharge of any gases into the atmosphere in excess of 250 ppm by volume (dry basis) of sulfur dioxide (SO<sub>2</sub>) at zero percent excess air. If the sulfur recovery plant consists of multiple process trains or release points the owner or operator shall comply with the 250 ppmv limit for each process train or release point or comply with a flow rate weighted average of 250 ppmv for all release points from the sulfur recovery plant; or

(ii) For sulfur recovery plant with a reduction control system not followed by incineration, the owner or operator shall not discharge or cause the discharge of any gases into the atmosphere in excess of 300 ppm by

volume of reduced sulfur compounds and 10 ppm by volume of hydrogen sulfide (HS<sub>2</sub>), each calculated as ppm SO<sub>2</sub> by volume (dry basis) at zero percent excess air; or

(iii) For systems using oxygen enrichment, the owner or operator shall calculate the applicable emission limit using Equation 1 of this section:

$$E_{LS} = k_1 \times (-0.038 * (\%O_2)^2 + 11.53 * \%O_2 + 25.6) \quad (\text{Eq. 1})$$

Where:

$E_{LS}$  = Emission rate of SO<sub>2</sub> for large sulfur recovery plant, ppmv;

$k_1$  = Constant factor for emission limit conversion:  $k_1 = 1$  for converting to SO<sub>2</sub> limit and  $k_1 = 1.2$  for converting to the reduced sulfur compounds limit; and  
 $\%O_2$  = O<sub>2</sub> concentration to the SRP, percent by volume (dry basis).

(2) For a sulfur recovery plant with a capacity of 20 LTD or less:

(i) For a sulfur recovery plant with an oxidation control system or a reduction control system followed by incineration, the owner or operator shall not

discharge or cause the discharge of any gases into the atmosphere in excess of 2,500 ppm by volume (dry basis) of SO<sub>2</sub> at zero percent excess air. If the sulfur recovery plant consists of multiple process trains or release points the owner or operator shall comply with the 2,500 ppmv limit for each process train or release point or comply with a flow rate weighted average of 2,500 ppmv for all release points from the sulfur recovery plant; or

(ii) For sulfur recovery plant with a reduction control system not followed

by incineration, the owner or operator shall not discharge or cause the discharge of any gases into the atmosphere in excess of 3,000 ppm by volume of reduced sulfur compounds and 100 ppm by volume of hydrogen sulfide (H<sub>2</sub>S), each calculated as ppm SO<sub>2</sub> by volume (dry basis) at zero percent excess air; or

(iii) For systems using oxygen enrichment, the owner or operator shall calculate the applicable emission limit using Equation 2 of this section:

$$E_{SS} = k_1 \times (-0.38 * (\%O_2)^2 + 115.3 * \%O_2 + 256) \quad (\text{Eq. 2})$$

Where:

$E_{SS}$  = Emission rate of SO<sub>2</sub> for small sulfur recovery plant, ppmv.

(3) Periods of maintenance of the sulfur pit, during which the emission limits in paragraphs (f)(1) and (2) shall not apply, shall not exceed 240 hours per year. The owner or operator must document the time periods during which the sulfur pit vents were not controlled and measures taken to minimize emissions during these periods. Examples of these measures include not adding fresh sulfur or shutting off vent fans.

(g) Each owner or operator of an affected fuel gas combustion device shall comply with the emission limits in paragraphs (g)(1) through (3) of this section.

(1) For each fuel gas combustion device, the owner or operator shall comply with either the emission limit in paragraph (g)(1)(i) of this section or the fuel gas concentration limit in paragraph (g)(1)(ii) of this section.

(i) The owner or operator shall not discharge or cause the discharge of any gases into the atmosphere that contain SO<sub>2</sub> in excess of 20 ppmv (dry basis, corrected to 0 percent excess air) determined hourly on a 3-hour rolling average basis and SO<sub>2</sub> in excess of 8 ppmv (dry basis, corrected to 0 percent excess air), determined daily on a 365 successive day rolling average basis; or

(ii) The owner or operator shall not burn in any fuel gas combustion device any fuel gas that contains H<sub>2</sub>S in excess of 162 ppmv determined hourly on a 3-hour rolling average basis and H<sub>2</sub>S in excess of 60 ppmv determined daily on a 365 successive calendar day rolling average basis.

(2) For each process heater with a rated capacity of greater than 40 million British thermal units per hour (MMBtu/hr), the owner or operator shall not discharge to the atmosphere any emissions of NO<sub>x</sub> in excess of 40 ppmv (dry basis, corrected to 0 percent excess air) on a 24-hour rolling average basis.

(3) Except as provided in paragraphs (h) and (i) of this section, the owner or operator of an affected flare shall not allow flow to each affected flare during normal operations of more than 7,080 standard cubic meters per day (m<sup>3</sup>/day) (250,000 standard cubic feet per day (scfd)) on a 30-day rolling average. The owner or operator of a newly constructed or reconstructed flare shall comply with the emission limit in this paragraph by no later than the date that flare becomes an affected flare subject to this subpart. The owner or operator of a modified flare shall comply with the emission limit in this paragraph by no later than 1 year after that flare becomes an affected flare subject to this subpart.

(h) The combustion in a flare of process upset gases or fuel gas that is

released to the flare as a result of relief valve leakage or other emergency malfunctions is exempt from paragraph (g) of this section.

(i) In periods of fuel gas imbalance that are described in the flare management plan required in section 60.103a(a), compliance with the emission limit in paragraph (g)(3) of this section is demonstrated by following the procedures and maintaining records described in the flare management plan to document the periods of excess fuel gas.

#### **§ 60.103a Work practice standards.**

(a) Each owner or operator that operates a flare that is subject to this subpart shall develop and implement a written flare management plan. The owner or operator of a newly constructed or reconstructed flare must develop and implement the flare management plan by no later than the date that flare becomes an affected flare subject to this subpart. The owner or operator of a modified flare must develop and implement the flare management plan by no later than 1 year after the flare becomes an affected flare subject to this subpart. The plan must include:

(1) A diagram illustrating all connections to the flare;

(2) Methods for monitoring flow rate to the flare, including a detailed

description of the manufacturer's specifications, including but not limited to, make, model, type, range, precision, accuracy, calibration, maintenance, and quality assurance procedures for flare gas monitoring devices;

(3) Procedures to minimize discharges to the flare gas system during the planned start-up and shutdown of the refinery process units that are connected to the affected flare;

(4) Procedures to conduct a root cause analysis of any process upset or malfunction that causes a discharge to the flare in excess of 14,160 m<sup>3</sup>/day (500,000 scfd);

(5) Procedures to reduce flaring in cases of fuel gas imbalance (i.e., excess fuel gas for the refinery's energy needs); and

(6) Explanation of procedures to follow during times that the flare must exceed the limit in § 60.102a(g)(3) (e.g., keep records of natural gas purchases to support assertion that the refinery is producing more fuel gas than needed to operate the processes).

(b) Each owner or operator that operates a fuel gas combustion device or sulfur recovery plant subject to this subpart shall conduct a root cause analysis of any emission limit exceedance or process start-up, shutdown, upset, or malfunction that causes a discharge to the atmosphere in excess of 227 kilograms per day (kg/day) (500 lb per day (lb/day)) of SO<sub>2</sub>. For any root cause analysis performed, the owner or operator shall record the identification of the affected facility, the date and duration of the discharge, the results of the root cause analysis, and the action taken as a result of the root cause analysis. The first root cause analysis for a modified flare must be conducted no later than the first discharge that occurs after the flare has been an affected flare subject to this subpart for 1 year.

(c) Each owner or operator of a delayed coking unit shall depressure to

5 lb per square inch gauge (psig) during reactor vessel depressuring and vent the exhaust gases to the fuel gas system for combustion in a fuel gas combustion device.

#### § 60.104a Performance tests.

(a) The owner or operator shall conduct a performance test for each FCCU, FCU, sulfur recovery plant, and fuel gas combustion device to demonstrate initial compliance with each applicable emissions limit in § 60.102a according to the requirements of § 60.8. The notification requirements of § 60.8(d) apply to the initial performance test and to subsequent performance tests required by paragraph (b) of this section (or as required by the Administrator), but does not apply to performance tests conducted for the purpose of obtaining supplemental data because of continuous monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments.

(b) The owner or operator of a FCCU or FCU that elects to monitor control device operating parameters according to the requirements in § 60.105a(b), to use bag leak detectors according to the requirements in § 60.105a(c), or to use COMS according to the requirements in § 60.105a(e) shall conduct a PM performance test at least once every 12 months and furnish the Administrator a written report of the results of each test.

(c) In conducting the performance tests required by this subpart (or as requested by the Administrator), the owner or operator shall use the test methods in 40 CFR part 60, Appendices A-1 through A-8 or other methods as specified in this section, except as provided in § 60.8(b).

(d) The owner or operator shall determine compliance with the PM, NO<sub>x</sub>, SO<sub>2</sub>, and CO emissions limits in § 60.102a(b) for FCCU and FCU using the following methods and procedures:

(1) Method 1 of Appendix A-1 to part 60 for sample and velocity traverses.

(2) Method 2 of Appendix A-1 to part 60 for velocity and volumetric flow rate.

(3) Method 3, 3A, or 3B of Appendix A-2 to part 60 for gas analysis. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B of Appendix A-2 to part 60.

(4) Method 5, 5B, or 5F of Appendix A-3 to part 60 for determining PM emissions and associated moisture content from a FCCU or FCU without a wet scrubber subject to the emissions limit in § 63.102a(b)(1). Use Method 5 or 5B of Appendix A-3 to part 60 for determining PM emissions and associated moisture content from a FCCU or FCU with a wet scrubber subject to the emissions limit in § 63.102a(b)(1).

(i) The PM performance test consists of 3 valid test runs; the duration of each test run must be no less than 60 minutes.

(ii) The emissions rate of PM (E<sub>PM</sub>) is computed for each run using Equation 3 of this section:

$$E = \frac{c_s Q_{sd}}{K R_c} \quad (\text{Eq. 3})$$

Where:

E = Emission rate of PM, g/kg, lbs per 1,000 lbs (lb/1,000 lbs) of coke burn-off;

c<sub>s</sub> = Concentration of total PM, grams per dry standard cubic meter (g/dscm), gr/dscf;

Q<sub>sd</sub> = Volumetric flow rate of effluent gas, dry standard cubic meters per hour, dry standard cubic feet per hour;

R<sub>c</sub> = Coke burn-off rate, kilograms per hour (kg/hr), lbs per hour (lbs/hr) coke; and

K = Conversion factor, 1.0 grams per gram (7,000 grains per lb).

(iii) The coke burn-off rate (R<sub>c</sub>) is computed for each run using Equation 4 of this section:

$$R_c = K_1 Q_r (\%CO_2 + \%CO) + K_2 Q_a - K_3 Q_r \left( \frac{\%CO}{2} + \%CO_2 + \%O_2 \right) + K_3 Q_{oxy} (\%O_{oxy}) \quad (\text{Eq. 4})$$

Where:

R<sub>c</sub> = Coke burn-off rate, kg/hr (lb/hr);

Q<sub>r</sub> = Volumetric flow rate of exhaust gas from FCCU regenerator or fluid coking burner before any emissions control or energy recovery system that burns auxiliary fuel, dry standard cubic meters per minute (dscm/min), dry standard cubic feet per minute (dscf/min);

Q<sub>a</sub> = Volumetric flow rate of air to FCCU regenerator or fluid coking burner, as determined from the unit's control room instrumentation, dscm/min (dscf/min);

Q<sub>oxy</sub> = Volumetric flow rate of O<sub>2</sub> enriched air to FCCU regenerator or fluid coking unit, as determined from the unit's control room instrumentation, dscm/min (dscf/min);

%CO<sub>2</sub> = Carbon dioxide concentration in FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis);

%CO = CO concentration in FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis);

%O<sub>2</sub> = O<sub>2</sub> concentration in FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis);

%O<sub>oxy</sub> = O<sub>2</sub> concentration in O<sub>2</sub> enriched air stream inlet to the FCCU regenerator or fluid coking burner, percent by volume (dry basis);

K<sub>1</sub> = Material balance and conversion factor, 0.2982 (kg-min)/(hr-dsc-%) [0.0186 (lb-min)/(hr-dscf-%)];

K<sub>2</sub> = Material balance and conversion factor, 2.088 (kg-min)/(hr-dscm) [0.1303 (lb-min)/(hr-dscf)]; and

$K_3$  = Material balance and conversion factor, 0.0994 (kg-min)/(hr-dscm-%) [0.00624 (lb-min)/(hr-dscf-%)].

(iv) During the performance test, the volumetric flow rate of exhaust gas from catalyst regenerator ( $Q_r$ ) before any

emission control or energy recovery system that burns auxiliary fuel is measured using Method 2 of Appendix A-1 to part 60.

(v) For subsequent calculations of coke burn-off rates or exhaust gas flow

rates, the volumetric flow rate of  $Q_r$  is calculated using average exhaust gas concentrations as measured by the monitors in § 60.105a(b)(2), if applicable, using Equation 5 of this section:

$$Q_r = \frac{79 \times Q_a + (100 - \%O_{xy}) \times Q_{oxy}}{100 - \%CO_2 - \%CO - \%O_2} \quad (\text{Eq. 5})$$

Where:

$Q_r$  = Volumetric flow rate of exhaust gas from FCCU regenerator or fluid coking burner before any emission control or energy recovery system that burns auxiliary fuel, dscm/min (dscf/min);

$Q_a$  = Volumetric flow rate of air to FCCU regenerator or fluid coking burner, as determined from the unit's control room instrumentation, dscm/min (dscf/min);

$Q_{oxy}$  = Volumetric flow rate of O<sub>2</sub> enriched air to FCCU regenerator or fluid coking unit, as determined from the unit's control room instrumentation, dscm/min (dscf/min);

$\%CO_2$  = Carbon dioxide concentration in FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis);

$\%CO$  = CO concentration FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis). When no auxiliary fuel is burned and a continuous CO monitor is not required in accordance

with § 60.105a(g)(3), assume %CO to be zero;

$\%O_2$  = O<sub>2</sub> concentration in FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis); and

$\%O_{oxy}$  = O<sub>2</sub> concentration in O<sub>2</sub> enriched air stream inlet to the FCCU regenerator or fluid coking burner, percent by volume (dry basis).

(5) Method 6, 6A, or 6C of Appendix A-4 to part 60 for moisture content and for the concentration of SO<sub>2</sub>; the duration of each test run must be no less than 4 hours. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6 or 6A of Appendix A-4 to part 60.

(6) Method 7, 7A, 7C, 7D, or 7E of Appendix A-4 to part 60 for moisture

content and for the concentration of NO<sub>x</sub> calculated as nitrogen dioxide (NO<sub>2</sub>); the duration of each test run must be no less than 4 hours. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 7 or 7C of Appendix A-4 to part 60.

(7) Method 10, 10A, or 10B of Appendix A-4 to part 60 for moisture content and for the concentration of CO. The sampling time for each run must be 60 minutes.

(8) The owner or operator shall adjust PM, NO<sub>x</sub>, SO<sub>2</sub>, and CO pollutant concentrations to 0 percent excess air or 0 percent O<sub>2</sub> using Equation 6 of this section:

$$C_{adj} = C_{meas} \left[ \frac{20.9}{20.9 - \%O_2} \right] \quad (\text{Eq. 6})$$

Where:

$C_{adj}$  = pollutant concentration adjusted to 0 percent excess air or O<sub>2</sub>, parts per million (ppm) or g/dscm;

$C_{meas}$  = pollutant concentration measured on a dry basis, ppm or g/dscm;

20.9<sub>c</sub> = 20.9 percent O<sub>2</sub>-0.0 percent O<sub>2</sub> (defined O<sub>2</sub> correction basis), percent;

20.9 = O<sub>2</sub> concentration in air, percent; and  
 $\%O_2$  = O<sub>2</sub> concentration measured on a dry basis, percent.

(e) The owner or operator of a FCCU or FCU that is controlled by an electrostatic precipitator or wet scrubber and that is subject to control device

operating parameter limits in § 60.102a(c) shall establish the limits based on the performance test results according to the following procedures:

(1) Reduce the parameter monitoring data to hourly averages for each test run;

(2) Determine the hourly average operating limit for each required parameter as the average of the three test runs.

(f) The owner or operator of an FCCU or FCU that uses cyclones to comply with the PM limit in § 60.102a(b)(1) and elects to comply with the COMS alternative monitoring option in

§ 60.105a(d) shall establish a site-specific opacity operating limit according to the procedures in paragraphs (f)(1) through (3) of this section.

(1) Collect COMS data every 10 seconds during the entire period of the PM performance test and reduce the data to 6-minute averages.

(2) Determine and record the hourly average opacity from all the 6-minute averages.

(3) Compute the site-specific limit using Equation 7 of this section:

$$\text{Opacity Limit} = \text{Opacity}_{st} \times \left( \frac{1 \text{ lb/1,000 lb coke burn}}{\text{PME}R_{st}} \right) \quad (\text{Eq. 7})$$

Where:

Opacity limit = Maximum permissible hourly average opacity, percent, or 10 percent, whichever is greater;

Opacity<sub>st</sub> = Hourly average opacity measured during the source test runs, percent; and

PME<sub>st</sub>R<sub>st</sub> = PM emission rate measured during the source test, lb/1,000 lbs coke burn.

(g) The owner or operator of a FCCU or FCU that is exempt from the requirement to install and operate a CO

CEMS pursuant to § 60.105a(h)(3) and that is subject to control device operating parameter limits in § 60.102a(c) shall establish the limits based on the performance test results

using the procedures in paragraphs (g)(1) and (2) of this section.

(1) Reduce the temperature and O<sub>2</sub> concentrations from the parameter monitoring systems to hourly averages for each test run.

(2) Determine the operating limit for temperature and O<sub>2</sub> concentrations as the average of the average temperature and O<sub>2</sub> concentration for the three test runs.

(h) The owner or operator shall determine compliance with the SO<sub>2</sub> and H<sub>2</sub>S emissions limits for sulfur recovery plants in §§ 60.102a(f)(1)(i), 60.102a(f)(1)(iii), 60.102a(f)(2)(i), and 60.102a(f)(2)(iii) and the reduced sulfur compounds and H<sub>2</sub>S emissions limits for sulfur recovery plants in § 60.102a(f)(1)(ii) and § 60.102a(f)(2)(ii) using the following methods and procedures:

(1) Method 1 of Appendix A-1 to part 60 for sample and velocity traverses.

(2) Method 2 of Appendix A-1 to part 60 for velocity and volumetric flow rate.

(3) Method 3, 3A, or 3B of Appendix A-2 to part 60 for gas analysis. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B of Appendix A-2 to part 60.

(4) Method 6, 6A, or 6C of Appendix A-4 to part 60 to determine the SO<sub>2</sub> concentration. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6 or 6A of Appendix A-4 to part 60.

(5) Method 15 or 15A of Appendix A-5 to part 60 or Method 16 of Appendix A-6 to part 60 to determine the reduced sulfur compounds and H<sub>2</sub>S concentrations. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 15A of Appendix A-5 to part 60.

(i) Each run consists of 16 samples taken over a minimum of 3 hours.

(ii) The owner or operator shall calculate the average H<sub>2</sub>S concentration after correcting for moisture and O<sub>2</sub> as the arithmetic average of the H<sub>2</sub>S concentration for each sample during the run (ppmv, dry basis, corrected to 0 percent excess air).

(iii) The owner or operator shall calculate the SO<sub>2</sub> equivalent for each run after correcting for moisture and O<sub>2</sub> as the arithmetic average of the SO<sub>2</sub> equivalent of reduced sulfur compounds for each sample during the run (ppmv, dry basis, corrected to 0 percent excess air).

(iv) The owner or operator shall use Equation 6 of this section to adjust pollutant concentrations to 0 percent O<sub>2</sub> or 0 percent excess air.

(i) The owner or operator shall determine compliance with the SO<sub>2</sub> and NO<sub>x</sub> emissions limits in § 60.102a(g) for a fuel gas combustion device according to the following test methods and procedures:

(1) Method 1 of Appendix A-1 to part 60 for sample and velocity traverses;

(2) Method 2 of Appendix A-1 to part 60 for velocity and volumetric flow rate;

(3) Method 3, 3A, or 3B of Appendix A-2 to part 60 for gas analysis. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B of Appendix A-2 to part 60;

(4) Method 6, 6A, or 6C of Appendix A-4 to part 60 to determine the SO<sub>2</sub> concentration. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6 or 6A of Appendix A-4 to part 60.

(i) The performance test consists of 3 valid test runs; the duration of each test run must be no less than 1 hour.

(ii) If a single fuel gas combustion device having a common source of fuel gas is monitored as allowed under § 60.107a(a)(1)(v), only one performance test is required. That is, performance tests are not required when a new affected fuel gas combustion device is added to a common source of fuel gas that previously demonstrated compliance.

(5) Method 7, 7A, 7C, 7D, or 7E of Appendix A-4 to part 60 for moisture content and for the concentration of NO<sub>x</sub> calculated as NO<sub>2</sub>; the duration of each test run must be no less than 4 hours. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 7 or 7C of Appendix A-4 to part 60.

(j) The owner or operator shall determine compliance with the H<sub>2</sub>S emissions limit in § 60.102a(g) for a fuel gas combustion device according to the following test methods and procedures:

(1) Method 1 of Appendix A-1 to part 60 for sample and velocity traverses;

(2) Method 2 of Appendix A-1 to part 60 for velocity and volumetric flow rate;

(3) Method 3, 3A, or 3B of Appendix A-2 to part 60 for gas analysis. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B of Appendix A-2 to part 60;

(4) Method 11, 15, or 15A of Appendix A-5 to part 60 or Method 16 of Appendix A-6 to part 60 for determining the H<sub>2</sub>S concentration for affected plants using an H<sub>2</sub>S monitor as specified in § 60.107a(a)(2). The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 15A of Appendix A-5 to part 60. The owner or operator may demonstrate compliance based on the mixture used in the fuel gas combustion device or for each individual fuel gas stream used in the fuel gas combustion device.

(i) For Method 11 of Appendix A-5 to part 60, the sampling time and sample volume must be at least 10 minutes and 0.010 dscm (0.35 dscf). Two samples of equal sampling times must be taken at about 1-hour intervals. The arithmetic average of these two samples constitutes a run. For most fuel gases, sampling times exceeding 20 minutes may result in depletion of the collection solution, although fuel gases containing low concentrations of H<sub>2</sub>S may necessitate sampling for longer periods of time.

(ii) For Method 15 of Appendix A-5 to part 60, at least three injects over a 1-hour period constitutes a run.

(iii) For Method 15A of Appendix A-5 to part 60, a 1-hour sample constitutes a run. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 15A of Appendix A-5 to part 60.

(iv) If monitoring is conducted at a single point in a common source of fuel gas as allowed under § 60.107a(a)(2)(iv), only one performance test is required. That is, performance tests are not required when a new affected fuel gas combustion device is added to a common source of fuel gas that previously demonstrated compliance.

#### **§ 60.105a Monitoring of emissions and operations for fluid catalytic cracking units (FCCU) and fluid coking units (FCU).**

(a) *FCCU and FCU subject to PM emissions limit.* Each owner or operator subject to the provisions of this subpart shall monitor each FCCU and FCU subject to the PM emissions limit in § 60.102a(b)(1) according to the requirements in paragraph (b), (c), (d), or (e) of this section.

(b) *Control device operating parameters.* Each owner or operator of a FCCU or FCU subject to the PM per coke burn-off emissions limit in § 60.102a(b)(1) shall comply with the requirements in paragraphs (b)(1) through (3) of this section.

(1) The owner or operator shall install, operate, and maintain continuous parameter monitor systems (CPMS) to measure and record operating parameters for each control device according to the requirements in paragraph (b)(1)(i) through (iii) of this section.

(i) For units controlled using an electrostatic precipitator, the owner or operator shall use CPMS to measure and record the hourly average total power input and secondary voltage to the entire system.

(ii) For units controlled using a wet scrubber, the owner or operator shall use CPMS to measure and record the hourly average pressure drop, liquid feed rate, and exhaust gas flow rate. As an alternative to a CPMS, the owner or operator must comply with the requirements in either paragraph (b)(1)(ii)(A) or (B) of this section.

(A) As an alternative to pressure drop, the owner or operator of a jet ejector type wet scrubber or other type of wet scrubber equipped with atomizing spray nozzles must conduct a daily check of the air or water pressure to the spray nozzles and record the results of each check.

(B) As an alternative to exhaust gas flow rate, the owner or operator shall comply with the approved alternative for monitoring exhaust gas flow rate in 40 CFR 63.1573(a) of the National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(iii) The owner or operator shall install, operate, and maintain each CPMS according to the manufacturer's specifications and requirements.

(iv) The owner or operator shall determine and record the average coke burn-off rate and hours of operation for each FCCU or FCU using the procedures in § 60.104a(d)(4)(iii).

(v) If you use a control device other than an electrostatic precipitator, wet scrubber, fabric filter, or cyclone, you may request approval to monitor parameters other than those required in paragraph (b)(1) of this section by submitting an alternative monitoring plan to the Administrator. The request must include the information in paragraphs (b)(1)(v)(A) through (E) of this section.

(A) A description of each affected facility and the parameter(s) to be monitored to determine whether the affected facility will continuously comply with the emission limitations and an explanation of the criteria used to select the parameter(s).

(B) A description of the methods and procedures that will be used to demonstrate that the parameter(s) can be used to determine whether the affected facility will continuously comply with the emission limitations and the schedule for this demonstration. The owner or operator must certify that an operating limit will be established for the monitored parameter(s) that represents the conditions in existence when the control device is being properly operated and maintained to meet the emission limitation.

(C) The frequency and content of the recordkeeping, recording, and reporting, if monitoring and recording are not continuous. The owner or operator also must include the rationale for the proposed monitoring, recording, and reporting requirements.

(D) Supporting calculations.

(E) Averaging time for the alternative operating parameter.

(2) For use in determining the coke burn-off rate for an FCCU or FCU, the owner or operator shall install, operate, calibrate, and maintain an instrument for continuously monitoring the concentrations of CO<sub>2</sub>, O<sub>2</sub> (dry basis), and if needed, CO in the exhaust gases prior to any control or energy recovery system that burns auxiliary fuels.

(i) The owner or operator shall install, operate, and maintain each monitor according to Performance Specification 3 of Appendix B to part 60.

(ii) The owner or operator shall conduct performance evaluations of each CO<sub>2</sub>, O<sub>2</sub>, and CO monitor according to the requirements in § 60.13(c) and Performance Specification 3 of Appendix B to part 60. The owner or operator shall use Method 3 of Appendix A-3 to part 60 for conducting the relative accuracy evaluations.

(iii) The owner or operator shall comply with the quality assurance requirements of procedure 1 of Appendix F to part 60, including quarterly accuracy determinations for CO<sub>2</sub> and CO monitors, annual accuracy determinations for O<sub>2</sub> monitors, and daily calibration drift tests.

(c) *Bag leak detection systems.* Each owner or operator shall install, operate, and maintain a bag leak detection system for each baghouse or similar fabric filter control device that is used to comply with the PM per coke burn-off emissions limit in § 60.102a(b)(1) for an FCCU or FCU according to paragraph (c)(1) of this section; prepare and operate by a site-specific monitoring plan according to paragraph (c)(2) of this section; take action according to paragraph (c)(3) of this section; and record information according to paragraph (c)(4) of this section.

(1) Each bag leak detection system must meet the specifications and requirements in paragraphs (c)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 0.00044 grains per actual cubic foot or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator shall continuously record the output from the bag leak detection system using electronic or other means (e.g., using a strip chart recorder or a data logger).

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (c)(1)(iv) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, the owner or operator must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, the owner or operator shall not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (c)(1)(vi) of this section.

(vi) Once per quarter, the owner or operator may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (c)(2) of this section.

(vii) The owner or operator shall install the bag leak detection sensor downstream of the baghouse and upstream of any wet scrubber.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) The owner or operator shall develop and submit to the Administrator for approval a site-specific monitoring plan for each baghouse and bag leak detection system. The owner or operator shall operate and maintain each baghouse and bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (c)(2)(i) through (vii) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored;

(vi) Procedures as specified in paragraph (c)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable; and

(vii) How the baghouse system will be operated and maintained, including monitoring of pressure drop across baghouse cells and frequency of visual inspections of the baghouse interior and baghouse components such as fans and dust removal and bag cleaning mechanisms.

(3) For each bag leak detection system, the owner or operator shall initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (c)(2)(vi) of this section, the owner or operator shall alleviate the cause of the alarm within 3 hours of the alarm by taking whatever action(s) are necessary. Actions may include, but are not limited to the following:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in particulate emissions;

(ii) Sealing off defective bags or filter media;

(iii) Replacing defective bags or filter media or otherwise repairing the control device;

(iv) Sealing off a defective baghouse compartment;

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(vi) Shutting down the process producing the particulate emissions.

(4) The owner or operator shall maintain records of the information specified in paragraphs (c)(4)(i) through (iii) of this section for each bag leak detection system.

(i) Records of the bag leak detection system output;

(ii) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detection system settings, and the final bag leak detection system settings; and

(iii) The date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and whether the alarm was alleviated within 3 hours of the alarm.

(d) *Continuous emissions monitoring systems (CEMS)*. An owner or operator subject to the PM concentration emission limit (in gr/dscf) in § 60.102a(b)(1) for an FCCU or FCU shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration (0 percent excess air) of PM in the exhaust gases prior to release to the atmosphere. The monitor must include an O<sub>2</sub> monitor for correcting the data for excess air.

(1) The owner or operator shall install, operate, and maintain each PM monitor according to Performance Specification 11 of appendix B to part 60. The span value of this PM monitor is 0.08 gr/dscf PM.

(2) The owner or operator shall conduct performance evaluations of each PM monitor according to the requirements in § 60.13(c) and Performance Specification 11 of appendix B to part 60. The owner or operator shall use EPA Methods 5 or 5I of Appendix A-3 to part 60 or Method 17 of Appendix A-6 to part 60 for conducting the relative accuracy evaluations.

(3) The owner or operator shall install, operate, and maintain each O<sub>2</sub> monitor according to Performance Specification 3 of appendix B to part 60. The span value of this O<sub>2</sub> monitor must be selected between 10 and 25 percent, inclusive.

(4) The owner or operator shall conduct performance evaluations of each O<sub>2</sub> monitor according to the requirements in § 60.13(c) and Performance Specification 3 of Appendix B to part 60. Method 3, 3A, or 3B of Appendix A-2 to part 60 shall be used for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10-1981, "Flue

and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B of Appendix A-2 to part 60.

(5) The owner or operator shall comply with the quality assurance requirements of Procedure 2 of Appendix B to part 60 for each PM CEMS and Procedure 1 of Appendix F to part 60 for each O<sub>2</sub> monitor, including quarterly accuracy determinations for each PM monitor, annual accuracy determinations for each O<sub>2</sub> monitor, and daily calibration drift tests.

(e) *Alternative monitoring option for FCCU and FCU—COMS*. Each owner or operator of an FCCU or FCU that uses cyclones to comply with the PM emission limit in § 60.102a(b)(1) shall monitor the opacity of emissions according to the requirements in paragraphs (e)(1) through (3) of this section.

(1) The owner or operator shall install, operate, and maintain an instrument for continuously monitoring and recording the opacity of emissions from the FCCU or the FCU exhaust vent.

(2) The owner or operator shall install, operate, and maintain each COMS according to Performance Specification 1 of Appendix B to part 60. The instrument shall be spanned at 20 to 60 percent opacity.

(3) The owner or operator shall conduct performance evaluations of each COMS according to § 60.13(c) and Performance Specification 1 of Appendix B to part 60.

(f) *FCCU and FCU subject to NO<sub>x</sub> limit*. Each owner or operator subject to the NO<sub>x</sub> emissions limit in § 60.102a(b)(2) for an FCCU or FCU shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration by volume (dry basis, 0 percent excess air) of NO<sub>x</sub> emissions into the atmosphere. The monitor must include an O<sub>2</sub> monitor for correcting the data for excess air.

(1) The owner or operator shall install, operate, and maintain each NO<sub>x</sub> monitor according to Performance Specification 2 of Appendix B to part 60. The span value of this NO<sub>x</sub> monitor is 200 ppmv NO<sub>x</sub>.

(2) The owner or operator shall conduct performance evaluations of each NO<sub>x</sub> monitor according to the requirements in § 60.13(c) and Performance Specification 2 of Appendix B to part 60. The owner or operator shall use Methods 7, 7A, 7C, 7D, or 7E of Appendix A-4 to part 60 for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas

Analyses,” (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 7 or 7C of Appendix A–4 to part 60.

(3) The owner or operator shall install, operate, and maintain each O<sub>2</sub> monitor according to Performance Specification 3 of Appendix B to part 60. The span value of this O<sub>2</sub> monitor must be selected between 10 and 25 percent, inclusive.

(4) The owner or operator shall conduct performance evaluations of each O<sub>2</sub> monitor according to the requirements in § 60.13(c) and Performance Specification 3 of Appendix B to part 60. Method 3, 3A, or 3B of Appendix A–2 to part 60 shall be used for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10–1981, “Flue and Exhaust Gas Analyses,” (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B of Appendix A–2 to part 60.

(5) The owner or operator shall comply with the quality assurance requirements of Procedure 1 of Appendix F to part 60 for each NO<sub>x</sub> and O<sub>2</sub> monitor, including quarterly accuracy determinations for NO<sub>x</sub> monitors, annual accuracy determinations for O<sub>2</sub> monitors, and daily calibration drift tests.

(g) *FCCU and FCU subject to SO<sub>2</sub> limit.* The owner or operator subject to the SO<sub>2</sub> emissions limit in § 60.102a(b)(3) for an FCCU or an FCU shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration by volume (dry basis, corrected to 0 percent excess air) of SO<sub>2</sub> emissions into the atmosphere. The monitor shall include an O<sub>2</sub> monitor for correcting the data for excess air.

(1) The owner or operator shall install, operate, and maintain each SO<sub>2</sub> monitor according to Performance Specification 2 of Appendix B to part 60. The span value of this SO<sub>2</sub> monitor is 200 ppmv SO<sub>2</sub>.

(2) The owner or operator shall conduct performance evaluations of each SO<sub>2</sub> monitor according to the requirements in § 60.13(c) and Performance Specification 2 of Appendix B to part 60. The owner or operator shall use Methods 6, 6A, or 6C of Appendix A–4 to part 60 for conducting the relative accuracy evaluations. The method ANSI / ASME PTC 19.10–1981, “Flue and Exhaust Gas Analyses,” (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6 or 6A of Appendix A–4 to part 60.

(3) The owner or operator shall install, operate, and maintain each O<sub>2</sub>

monitor according to Performance Specification 3 of Appendix B to part 60. The span value of this O<sub>2</sub> monitor must be selected between 10 and 25 percent, inclusive.

(4) The owner or operator shall conduct performance evaluations of each O<sub>2</sub> monitor according to the requirements in § 60.13(c) and Performance Specification 3 of Appendix B to part 60. Method 3, 3A, or 3B of Appendix A–2 to part 60 shall be used for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10–1981, “Flue and Exhaust Gas Analyses,” (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B of Appendix A–2 to part 60.

(5) The owner or operator shall comply with the quality assurance requirements in Procedure 1 of Appendix F to part 60 for each SO<sub>2</sub> and O<sub>2</sub> monitor, including quarterly accuracy determinations for SO<sub>2</sub> monitors, annual accuracy determinations for O<sub>2</sub> monitors, and daily calibration drift tests.

(h) *FCCU and fluid coking units subject to CO emissions limit.* Except as specified in paragraph (h)(3) of this section, the owner or operator shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration by volume (dry basis) of CO emissions into the atmosphere from each FCCU and FCU subject to the CO emissions limit in § 60.102a(b)(4).

(1) The owner or operator shall install, operate, and maintain each CO monitor according to Performance Specification 4 or 4A of Appendix B to part 60. The span value for this instrument is 1,000 ppm CO.

(2) The owner or operator shall conduct performance evaluations of each CO monitor according to the requirements in § 60.13(c) and Performance Specification 4 or 4A of Appendix B to part 60. The owner or operator shall use Methods 10, 10A, or 10B of Appendix A–4 to part 60 for conducting the relative accuracy evaluations.

(3) A CO CEMS need not be installed if the owner or operator demonstrates that all hourly average CO emissions are and will remain less than 50 ppmv (dry basis) corrected to 0 percent excess air. The Administrator may revoke this exemption from monitoring upon a determination that CO emissions on an hourly average basis have exceeded 50 ppmv (dry basis) corrected to 0 percent excess air, in which case a CO CEMS shall be installed within 180 days.

(i) The demonstration shall consist of continuously monitoring CO emissions

for 30 days using an instrument that meets the requirements of Performance Specification 4 or 4A of Appendix B to part 60. The span value shall be 100 ppm CO instead of 1,000 ppm, and the relative accuracy limit shall be 10 percent of the average CO emissions or 5 ppm CO, whichever is greater. For instruments that are identical to Method 10 of Appendix A–4 to part 60 and employ the sample conditioning system of Method 10A of Appendix A–4 to part 60, the alternative relative accuracy test procedure in section 10.1 of Performance Specification 2 of Appendix B to part 60 may be used in place of the relative accuracy test.

(ii) The owner or operator must submit the following information to the Administrator:

(A) The measurement data specified in paragraph (h)(3)(i) of this section along with all other operating data known to affect CO emissions; and

(B) Descriptions of the CPMS for exhaust gas temperature and O<sub>2</sub> monitor required in paragraph (h)(4) of this section and operating limits for those parameters to ensure combustion conditions remain similar to those that exist during the demonstration period.

(iii) The effective date of the exemption from installation and operation of a CO CEMS is the date of submission of the information and data required in paragraph (h)(3)(ii) of this section.

(4) The owner or operator of a FCCU or FCU that is exempted from the requirement to install and operate a CO CEMS in paragraph (h)(3) of this section shall install, operate, calibrate, and maintain CPMS to measure and record the operating parameters in paragraph (h)(4)(i) or (ii) of this section. The owner or operator shall install, operate, and maintain each CPMS according to the manufacturer’s specifications.

(i) For a FCCU or FCU with no post-combustion control device, the temperature and O<sub>2</sub> concentration of the exhaust gas stream exiting the unit.

(ii) For a FCCU or FCU with a post-combustion control device, the temperature and O<sub>2</sub> concentration of the exhaust gas stream exiting the control device.

(i) *Excess emissions.* For the purpose of reports required by § 60.7(c), periods of excess emissions for a FCCU or FCU subject to the emissions limitations in § 60.102a(b) are defined as specified in paragraphs (i)(1) through (6) of this section. Note: Determine all averages, except for opacity, as the arithmetic average of the applicable 1-hour averages, e.g., determine the rolling 3-hour average as the arithmetic average of three contiguous 1-hour averages.



(1) If a CPMS is used according to § 60.105a(b)(1), all 3-hour periods during which the average PM control device operating characteristics, as measured by the continuous monitoring systems under § 60.105a(b)(1), fall below the levels established during the performance test.

(2) If a PM CEMS is used according to § 60.105a(d), all 7-day periods during which the average PM emission rate, as measured by the continuous PM monitoring system under § 60.105a(d) exceeds 0.040 gr/dscf corrected to 0 percent excess air for a modified or reconstructed FCCU, 0.020 gr/dscf corrected to 0 percent excess air for a newly constructed FCCU, or 0.040 gr/dscf for an affected fluid coking unit.

(3) If a COMS is used according to § 60.105a(e), all 3-hour periods during which the average opacity, as measured by the COMS under § 60.105a(e), exceeds the site-specific limit established during the most recent performance test.

(4) All rolling 7-day periods during which the average concentration of NO<sub>x</sub> as measured by the NO<sub>x</sub> CEMS under § 60.105a(f) exceeds 80 ppmv for an affected FCCU or FCU.

(5) Except as provided in paragraph (i)(7) of this section, all rolling 7-day periods during which the average concentration of SO<sub>2</sub> as measured by the SO<sub>2</sub> CEMS under § 60.105a(g) exceeds 50 ppmv, and all rolling 365-day periods during which the average concentration of SO<sub>2</sub> as measured by the SO<sub>2</sub> CEMS exceeds 25 ppmv.

(6) All 1-hour periods during which the average CO concentration as measured by the CO continuous monitoring system under § 60.105a(h) exceeds 500 ppmv or, if applicable, all 1-hour periods during which the average temperature and O<sub>2</sub> concentration as measured by the continuous monitoring systems under § 60.105a(h)(4) fall below the operating limits established during the performance test.

#### **§ 60.106a Monitoring of emissions and operations for sulfur recovery plants.**

(a) The owner or operator of a sulfur recovery plant that is subject to the emissions limits in § 60.102a(f)(1) or § 60.102a(f)(2) shall:

(1) For sulfur recovery plants subject to the SO<sub>2</sub> emission limit in § 60.102a(f)(1)(i) or § 60.102a(f)(2)(i), the owner or operator shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration (dry basis, zero percent excess air) of any SO<sub>2</sub> emissions into the atmosphere. The monitor shall include an oxygen

monitor for correcting the data for excess air.

(i) The span values for this monitor are two times the applicable SO<sub>2</sub> emission limit and between 10 and 25 percent O<sub>2</sub>, inclusive.

(ii) The owner or operator shall install, operate, and maintain each SO<sub>2</sub> CEMS according to Performance Specification 2 of Appendix B to part 60.

(iii) The owner or operator shall conduct performance evaluations of each SO<sub>2</sub> monitor according to the requirements in § 60.13(c) and Performance Specification 2 of Appendix B to part 60. The owner or operator shall use Methods 6 or 6C of Appendix A-4 to part 60 and Method 3 or 3A of Appendix A-2 of part 60 for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6.

(2) For sulfur recovery plants that are subject to the reduced sulfur compound and H<sub>2</sub>S emission limit in § 60.102a(f)(1)(ii) or § 60.102a(f)(2)(ii), the owner or operator shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration of reduced sulfur, H<sub>2</sub>S, and O<sub>2</sub> emissions into the atmosphere. The reduced sulfur emissions shall be calculated as SO<sub>2</sub> (dry basis, zero percent excess air).

(i) The span values for this monitor are two times the applicable reduced sulfur emission limit, two times the H<sub>2</sub>S emission limit, and between 10 and 25 percent O<sub>2</sub>, inclusive.

(ii) The owner or operator shall install, operate, and maintain each reduced sulfur CEMS according to Performance Specification 5 of Appendix B to part 60.

(iii) The owner or operator shall conduct performance evaluations of each reduced sulfur monitor according to the requirements in § 60.13(c) and Performance Specification 5 of Appendix B to part 60. The owner or operator shall use Methods 15 or 15A of Appendix A-5 to part 60 for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 15A of Appendix A-5 to part 60.

(iv) The owner or operator shall install, operate, and maintain each H<sub>2</sub>S CEMS according to Performance Specification 7 of Appendix B to part 60.

(v) The owner or operator shall conduct performance evaluations of each reduced sulfur monitor according to the requirements in § 60.13(c) and Performance Specification 5 of Appendix B to part 60. The owner or operator shall use Methods 11, 15, or 15A of Appendix A-5 to part 60 or Method 16 of Appendix A-6 to part 60 for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 15A of Appendix A-5 to part 60.

(vi) The owner or operator shall install, operate, and maintain each O<sub>2</sub> monitor according to Performance Specification 3 of Appendix B to part 60.

(vii) The span value for the O<sub>2</sub> monitor must be selected between 10 and 25 percent, inclusive.

(viii) The owner or operator shall conduct performance evaluations for the O<sub>2</sub> monitor according to the requirements of § 60.13(c) and Performance Specification 3 of Appendix B to part 60. The owner or operator shall use Methods 3, 3A, or 3B of Appendix A-2 to part 60 for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B of Appendix A-2 to part 60.

(ix) The owner or operator shall comply with the applicable quality assurance procedures of Appendix F to part 60 for each monitor, including annual accuracy determinations for each O<sub>2</sub> monitor, and daily calibration drift determinations.

(3) In place of the reduced sulfur monitor required in paragraph (a)(2) of this section, the owner or operator shall install, calibrate, operate, and maintain an instrument using an air or O<sub>2</sub> dilution and oxidation system to convert any reduced sulfur to SO<sub>2</sub> for continuously monitoring and recording the concentration (dry basis, 0 percent excess air) of the total resultant SO<sub>2</sub>. The monitor must include an O<sub>2</sub> monitor for correcting the data for excess O<sub>2</sub>.

(i) The span value for this monitor is two times the applicable SO<sub>2</sub> emission limit.

(ii) The owner or operator shall conduct performance evaluations of each SO<sub>2</sub> monitor according to the requirements in § 60.13(c) and Performance Specification 5 of Appendix B to part 60. The owner or operator shall use Methods 15 or 15A of

Appendix A-5 to part 60 for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 15A of Appendix A-5 to part 60.

(iii) The owner or operator shall install, operate, and maintain each O<sub>2</sub> monitor according to Performance Specification 3 of Appendix B to part 60.

(iv) The span value for the O<sub>2</sub> monitor must be selected between 10 and 25 percent, inclusive.

(v) The owner or operator shall conduct performance evaluations for the O<sub>2</sub> monitor according to the requirements of § 60.13(c) and Performance Specification 3 of Appendix B to part 60. The owner or operator shall use Methods 3, 3A, or 3B of Appendix A-2 to part 60 for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B of Appendix A-2 to part 60.

(vi) The owner or operator shall comply with the applicable quality assurance procedures of Appendix F to part 60 for each monitor, including quarterly accuracy determinations for each SO<sub>2</sub> monitor, annual accuracy determinations for each O<sub>2</sub> monitor, and daily calibration drift determinations.

(b) *Excess emissions.* For the purpose of reports required by § 60.7(c), periods of excess emissions for sulfur recovery plants subject to the emissions limitations in § 60.102a(f) are defined as specified in paragraphs (b)(1) through (3) of this section. **Note:** Determine all averages as the arithmetic average of the applicable 1-hour averages, e.g., determine the rolling 12-hour average as the arithmetic average of 12 contiguous 1-hour averages.

(1) All 12-hour periods during which the average concentration of SO<sub>2</sub> as measured by the SO<sub>2</sub> continuous monitoring system required under paragraph (a)(1) of this section exceeds the applicable emission limit (dry basis, zero percent excess air); or

(2) All 12-hour periods during which the average concentration of reduced sulfur (as SO<sub>2</sub>) as measured by the reduced sulfur continuous monitoring system required under paragraph (a)(2) of this section exceeds the applicable emission limit; or

(3) All 12-hour periods during which the average concentration of H<sub>2</sub>S as measured by the H<sub>2</sub>S continuous monitoring system required under

paragraph (a)(2) of this section exceeds the applicable emission limit (dry basis, 0 percent excess air).

**§ 60.107a Monitoring of emissions and operations for fuel gas combustion devices.**

(a) *Fuel gas combustion devices subject to SO<sub>2</sub> or H<sub>2</sub>S limit.* The owner or operator of a fuel gas combustion device that is subject to the requirements in § 60.102a(g) shall comply with the requirements in paragraph (a)(1) of this section for SO<sub>2</sub> emissions or paragraph (a)(2) of this section for H<sub>2</sub>S emissions.

(1) The owner or operator of a fuel gas combustion device subject to the SO<sub>2</sub> emissions limits in § 60.102a(g)(1)(i) shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration (dry basis, 0 percent excess air) of SO<sub>2</sub> emissions into the atmosphere. The monitor must include an O<sub>2</sub> monitor for correcting the data for excess air.

(i) The owner or operator shall install, operate, and maintain each SO<sub>2</sub> monitor according to Performance Specification 2 of Appendix B to part 60. The span value for the SO<sub>2</sub> monitor is 50 ppm SO<sub>2</sub>.

(ii) The owner or operator shall conduct performance evaluations for the SO<sub>2</sub> monitor according to the requirements of § 60.13(c) and Performance Specification 2 of Appendix B to part 60. The owner or operator shall use Methods 6, 6A, or 6C of Appendix A-4 to part 60 for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6 or 6A of Appendix A-4 to part 60. Samples taken by Method 6 of Appendix A-4 to part 60 shall be taken at a flow rate of approximately 2 liters/min for at least 30 minutes. The relative accuracy limit shall be 20 percent or 4 ppm, whichever is greater, and the calibration drift limit shall be 5 percent of the established span value.

(iii) The owner or operator shall install, operate, and maintain each O<sub>2</sub> monitor according to Performance Specification 3 of Appendix B to part 60. The span value for the O<sub>2</sub> monitor must be selected between 10 and 25 percent, inclusive.

(iv) The owner or operator shall conduct performance evaluations for the O<sub>2</sub> monitor according to the requirements of § 60.13(c) and Performance Specification 3 of Appendix B to part 60. The owner or operator shall use Methods 3, 3A, or 3B of Appendix A-2 to part 60 for

conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B of Appendix A-2 to part 60.

(v) The owner or operator shall comply with the applicable quality assurance procedures in Appendix F to part 60, including quarterly accuracy determinations for SO<sub>2</sub> monitors, annual accuracy determinations for O<sub>2</sub> monitors, and daily calibration drift tests.

(vi) Fuel gas combustion devices having a common source of fuel gas may be monitored at only one location (i.e., after one of the combustion devices), if monitoring at this location accurately represents the SO<sub>2</sub> emissions into the atmosphere from each of the combustion devices.

(2) The owner or operator of a fuel gas combustion device subject to the H<sub>2</sub>S concentration limits in § 60.102a(g)(1)(ii) shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration by volume (dry basis) of H<sub>2</sub>S in the fuel gases before being burned in any fuel gas combustion device.

(i) The owner or operator shall install, operate, and maintain each H<sub>2</sub>S monitor according to Performance Specification 7 of Appendix B to part 60. The span value for this instrument is 320 ppmv H<sub>2</sub>S.

(ii) The owner or operator shall conduct performance evaluations for each H<sub>2</sub>S monitor according to the requirements of § 60.13(c) and Performance Specification 7 of Appendix B to part 60. The owner or operator shall use Method 11, 15, or 15A of Appendix A-5 to part 60 or Method 16 of Appendix A-6 to part 60 for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 15A of Appendix A-5 to part 60.

(iii) The owner or operator shall comply with the applicable quality assurance procedures in Appendix F to part 60 for each H<sub>2</sub>S monitor.

(iv) Fuel gas combustion devices having a common source of fuel gas may be monitored at only one location, if monitoring at this location accurately represents the concentration of H<sub>2</sub>S in the fuel gas being burned.

(3) The owner or operator of a fuel gas combustion device is not required to comply with paragraph (a)(1) or (2) of this section for fuel gas streams that are

exempt under § 60.102a(h) and fuel gas streams combusted in a process heater or other fuel gas combustion device that are inherently low in sulfur content. Fuel gas streams meeting one of the requirements in paragraphs (a)(3)(i) through (iv) of this section will be considered inherently low in sulfur content.

(i) Pilot gas for heaters and flares.

(ii) Fuel gas streams that meet a commercial-grade product specification for sulfur content of 30 ppmv or less. In the case of a liquefied petroleum gas (LPG) product specification in the pressurized liquid state, the gas phase sulfur content should be evaluated assuming complete vaporization of the LPG and sulfur containing-compounds at the product specification concentration.

(iii) Fuel gas streams produced in process units that are intolerant to sulfur contamination, such as fuel gas streams produced in the hydrogen plant, catalytic reforming unit, isomerization unit, and HF alkylation process units.

(iv) Other fuel gas streams that an owner or operator demonstrates are low-sulfur according to the procedures in paragraph (b) of this section.

(4) If the composition of an exempt fuel gas stream changes, the owner or operator must follow the procedures in paragraph (b)(3) of this section.

(b) *Exemption from H<sub>2</sub>S monitoring requirements for low-sulfur fuel gas streams.* The owner or operator of a fuel gas combustion device may apply for an exemption from the H<sub>2</sub>S monitoring requirements in paragraph (a)(2) of this section for a fuel gas stream that is inherently low in sulfur content. A fuel gas stream that is demonstrated to be low-sulfur is exempt from the monitoring requirements of paragraphs (a)(1) and (2) of this section until there are changes in operating conditions or stream composition.

(1) The owner or operator shall submit to the Administrator a written application for an exemption from monitoring. The application must contain the following information:

(i) A description of the fuel gas stream/system to be considered, including submission of a portion of the appropriate piping diagrams indicating the boundaries of the fuel gas stream/system, and the affected fuel gas combustion device(s) to be considered;

(ii) A statement that there are no crossover or entry points for sour gas (high H<sub>2</sub>S content) to be introduced into the fuel gas stream/system (this should be shown in the piping diagrams);

(iii) An explanation of the conditions that ensure low amounts of sulfur in the

fuel gas stream (i.e., control equipment or product specifications) at all times;

(iv) The supporting test results from sampling the requested fuel gas stream/system demonstrating that the sulfur content is less than 5 ppm H<sub>2</sub>S. Sampling data must include, at minimum, 2 weeks of daily monitoring (14 grab samples) for frequently operated fuel gas streams/systems; for infrequently operated fuel gas streams/systems, seven grab samples must be collected unless other additional information would support reduced sampling. The owner or operator shall use detector tubes ("length-of-stain tube" type measurement) following the "Gas Processors Association Standard 2377-86, Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes," 1986 Revision (incorporated by reference—see § 60.17), with ranges 0-10/0-100 ppm (N = 10/1) to test the applicant fuel gas stream for H<sub>2</sub>S; and

(v) A description of how the 2 weeks (or seven samples for infrequently operated fuel gas streams/systems) of monitoring results compares to the typical range of H<sub>2</sub>S concentration (fuel quality) expected for the fuel gas stream/system going to the affected fuel gas combustion device (e.g., the 2 weeks of daily detector tube results for a frequently operated loading rack included the entire range of products loaded out, and, therefore, should be representative of typical operating conditions affecting H<sub>2</sub>S content in the fuel gas stream going to the loading rack flare).

(2) The effective date of the exemption is the date of submission of the information required in paragraph (b)(1) of this section.

(3) No further action is required unless refinery operating conditions change in such a way that affects the exempt fuel gas stream/system (e.g., the stream composition changes). If such a change occurs, the owner or operator shall follow the procedures in paragraph (b)(3)(i), (b)(3)(ii), or (b)(3)(iii) of this section.

(i) If the operation change results in a sulfur content that is still within the range of concentrations included in the original application, the owner or operator shall conduct an H<sub>2</sub>S test on a grab sample and record the results as proof that the concentration is still within the range.

(ii) If the operation change results in a sulfur content that is outside the range of concentrations included in the original application, the owner or operator may submit new information following the procedures of paragraph (b)(1) of this section within 60 days (or

within 30 days after the seventh grab sample is tested for infrequently operated process units).

(iii) If the operation change results in a sulfur content that is outside the range of concentrations included in the original application, and the owner or operator chooses not to submit new information to support an exemption, the owner or operator must begin H<sub>2</sub>S monitoring using daily stain sampling to demonstrate compliance. The owner or operator must begin monitoring according to the requirements in paragraphs (a)(1) or (a)(2) of this section as soon as practicable but in no case later than 180 days after the operation change. During daily stain tube sampling, a daily sample exceeding 162 ppmv is an exceedance of the 3-hour H<sub>2</sub>S concentration limit. The owner or operator must determine a rolling 365-day average using the stain sampling results; an average H<sub>2</sub>S concentration of 5 ppmv must be used for days prior to the operation change.

(c) *Process heaters subject to NO<sub>x</sub> limit.* The owner or operator of a process heater subject to the NO<sub>x</sub> emission limit in § 60.102a(g)(2) shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration (dry basis, 0 percent excess air) of NO<sub>x</sub> emissions into the atmosphere. The monitor must include an O<sub>2</sub> monitor for correcting the data for excess air.

(1) The owner or operator shall install, operate, and maintain each NO<sub>x</sub> monitor according to Performance Specification 2 of Appendix B to part 60. The span value of this NO<sub>x</sub> monitor is 200 ppmv NO<sub>x</sub>.

(2) The owner or operator shall conduct performance evaluations of each NO<sub>x</sub> monitor according to the requirements in § 60.13(c) and Performance Specification 2 of Appendix B to part 60. The owner or operator shall use Methods 7, 7A, 7C, 7D, or 7E of Appendix A-4 to part 60 for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 7 or 7C of Appendix A-4 to part 60.

(3) The owner or operator shall install, operate, and maintain each O<sub>2</sub> monitor according to Performance Specification 3 of Appendix B to part 60. The span value of this O<sub>2</sub> monitor must be selected between 10 and 25 percent, inclusive.

(4) The owner or operator shall conduct performance evaluations of each O<sub>2</sub> monitor according to the requirements in § 60.13(c) and

Performance Specification 3 of Appendix B to part 60. Method 3, 3A, or 3B of Appendix A-2 to part 60 shall be used for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B of Appendix A-2 to part 60.

(5) The owner or operator shall comply with the quality assurance requirements in Procedure 1 of Appendix F to part 60 for each NO<sub>x</sub> and O<sub>2</sub> monitor, including quarterly accuracy determinations for NO<sub>x</sub> monitors, annual accuracy determinations for O<sub>2</sub> monitors, and daily calibration drift tests.

(6) The owner or operator of a process heater that has a rated heating capacity of less than 100 MMBtu and is equipped with low-NO<sub>x</sub> burners (LNB) or ultra low-NO<sub>x</sub> burners (ULNB) is not subject to the monitoring requirements in paragraphs (c)(1) through (5) of this section. The owner or operator of such a process heater must conduct biennial performance tests to demonstrate compliance.

(d) *Sulfur monitoring for affected flares.* The owner or operator of an affected flare subject to § 60.103a(b) shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration of reduced sulfur in flare gas. The owner or operator of a modified flare shall install this instrument by no later than 1 year after the flare becomes an affected flare subject to this subpart.

(1) The owner or operator shall install, operate, and maintain each reduced sulfur CEMS according to Performance Specification 5 of Appendix B to part 60.

(2) The owner or operator shall conduct performance evaluations of each reduced sulfur monitor according to the requirements in § 60.13(c) and Performance Specification 5 of Appendix B to part 60. The owner or operator shall use Methods 15 or 15A of Appendix A-5 to part 60 for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses," (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 15A of Appendix A-5 to part 60.

(3) The owner or operator shall comply with the applicable quality assurance procedures in Appendix F to part 60 for each reduced sulfur monitor.

(e) *Flow monitoring for flares.* The owner or operator of an affected flare subject to § 60.102a(g)(3) shall install,

operate, calibrate, and maintain CPMS to measure and record the exhaust gas flow rate. The owner or operator of a modified flare shall install this instrument by no later than 1 year after the flare becomes an affected flare subject to this subpart.

(1) The CPMS must be able to correct for the temperature and pressure of the system and output flow in standard conditions as defined in § 60.2.

(2) The owner or operator shall install, operate, and maintain each CPMS according to the manufacturer's specifications and requirements.

(f) *Excess emissions.* For the purpose of reports required by § 60.7(c), periods of excess emissions for fuel gas combustion devices subject to the emissions limitations in § 60.102a(g) are defined as specified in paragraphs (f)(1) through (4) of this section. **Note:** Determine all averages as the arithmetic average of the applicable 1-hour averages, e.g., determine the rolling 3-hour average as the arithmetic average of three contiguous 1-hour averages.

(1) All rolling 3-hour periods during which the average concentration of SO<sub>2</sub> as measured by the SO<sub>2</sub> continuous monitoring system required under paragraph (a)(1) of this section exceeds 20 ppmv, and all rolling 365-day periods during which the average concentration as measured by the SO<sub>2</sub> continuous monitoring system required under paragraph (a)(1) of this section exceeds 8 ppmv; or

(2) All rolling 3-hour periods during which the average concentration of H<sub>2</sub>S as measured by the H<sub>2</sub>S continuous monitoring system required under paragraph (a)(2) of this section exceeds 162 ppmv, all days in which the concentration of H<sub>2</sub>S as measured by daily stain tube sampling required under paragraph (b)(3)(iii) of this section exceeds 162 ppmv, and all rolling 365-day periods during which the average concentration as measured by the H<sub>2</sub>S continuous monitoring system under paragraph (a)(2) of this section exceeds 60 ppmv.

(3) All rolling 24-hour periods during which the average concentration of NO<sub>x</sub> as measured by the NO<sub>x</sub> continuous monitoring system required under paragraph (c) of this section exceeds 40 ppmv.

(4) All rolling 30-day periods during which the average flow rate to an affected flare as measured by the monitoring system required under paragraph (e) of this section exceeds 250,000 scfd.

#### § 60.108a Recordkeeping and reporting requirements.

(a) Each owner or operator subject to the emissions limitations in § 60.102a shall comply with the notification, recordkeeping, and reporting requirements in § 60.7 and other requirements as specified in this section.

(b) Each owner or operator subject to an emissions limitation in § 60.102a shall notify the Administrator of the specific monitoring provisions of §§ 60.105a, 60.106a, and 60.107a with which the owner or operator seeks to comply. Notification shall be submitted with the notification of initial startup required by § 60.7(a)(3).

(c) The owner or operator shall maintain the following records:

(1) A copy of the flare management plan and each root cause analysis of a discharge;

(2) Records of information to document conformance with bag leak detection system operation and maintenance requirements in § 60.105a(c).

(3) Records of bag leak detection system alarms and actions according to § 60.105a(c).

(4) For each FCCU and fluid coking unit subject to the monitoring requirements in § 60.105a(b)(1), records of the average coke burn-off rate and hours of operation.

(5) For each fuel gas stream to which one of the exemptions listed in § 60.107a(a)(3) applies, records of the specific exemption determined to apply for each fuel stream. If the owner or operator applies for the exemption described in § 60.107a(a)(3)(iv), the owner or operator must keep a copy of the application as well as the letter from the Administrator granting approval of the application.

(6) The owner or operator shall record and maintain records of discharges greater than 500 lb/day SO<sub>2</sub> from any affected fuel gas combustion device or sulfur recovery plant and discharges to an affected flare in excess of 500,000 scfd. These records shall include:

(i) A description of the discharge.

(ii) For discharges greater than 500 lb/day SO<sub>2</sub>, the date and time the discharge was first identified and the duration of the discharge.

(iii) The measured or calculated cumulative quantity of gas discharged over the discharge duration. If the discharge duration exceeds 24 hours, record the discharge quantity for each 24-hour period. Engineering calculations are allowed for fuel gas combustion devices other than flares.

(iv) For discharges greater than 500 lb/day SO<sub>2</sub>, the measured or estimated

concentration of H<sub>2</sub>S, TRS and SO<sub>2</sub> of the stream discharged. Process knowledge can be used to make these estimates for fuel gas combustion devices other than flares.

(v) For discharges greater than 500 lb/day SO<sub>2</sub>, the cumulative quantity of H<sub>2</sub>S and SO<sub>2</sub> released into the atmosphere. For releases controlled by flares, assume 99 percent conversion of reduced sulfur to SO<sub>2</sub>. For other fuel gas combustion devices, assume 99 percent conversion of H<sub>2</sub>S to SO<sub>2</sub>.

(vi) Results of any root-cause analysis conducted as required in § 60.103a(a)(4) and § 60.103a(b).

(d) Each owner or operator subject to this subpart shall submit an excess emissions report for all periods of excess emissions according to the requirements of § 60.7(c) except that the report shall contain the information specified in paragraphs (d)(1) through (7) of this section.

(1) The date that the exceedance occurred;

(2) An explanation of the exceedance;

(3) Whether the exceedance was concurrent with a startup, shutdown, or malfunction of an affected facility or control system; and

(4) A description of the action taken, if any.

(5) A root-cause summary report that provides the information described in paragraph (e)(6) of this section for all discharges for which a root-cause analysis was required by § 60.103a(a)(4) and § 60.103a(b).

(6) For any periods for which monitoring data are not available, any changes made in operation of the emission control system during the period of data unavailability which could affect the ability of the system to meet the applicable emission limit. Operations of the control system and affected facility during periods of data unavailability are to be compared with operation of the control system and affected facility before and following the period of data unavailability.

(7) A written statement, signed by a responsible official, certifying the accuracy and completeness of the information contained in the report.

**§ 60.109a Delegation of authority.**

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. You should

contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency within your State.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency, the approval authorities contained in paragraphs (b)(1) through (3) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of a major change to test methods under § 60.8(b). A “major change to test method” is defined in 40 CFR 63.90.

(2) Approval of a major change to monitoring under § 60.13(i). A “major change to monitoring” is defined in 40 CFR 63.90.

(3) Approval of a major change to recordkeeping/reporting under § 60.7(b) through (f). A “major change to recordkeeping/reporting” is defined in 40 CFR 63.90.

[FR Doc. E8-13498 Filed 6-23-08; 8:45 am]

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## Federal Register

Vol. 73, No. 122

Tuesday, June 24, 2008

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Executive orders and proclamations	<b>741-6000</b>
<b>The United States Government Manual</b>	<b>741-6000</b>
<b>Other Services</b>	
Electronic and on-line services (voice)	<b>741-6020</b>
Privacy Act Compilation	<b>741-6064</b>
Public Laws Update Service (numbers, dates, etc.)	<b>741-6043</b>
TTY for the deaf-and-hard-of-hearing	<b>741-6086</b>

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### FEDERAL REGISTER PAGES AND DATE, JUNE

31351-31604	2
31605-31748	3
31749-31928	4
31929-32234	5
32235-32426	6
32427-32634	9
32635-32982	10
32983-33290	11
33291-33660	12
33661-33874	13
33875-34174	16
34175-34604	17
34605-34842	18
34843-35058	19
35059-35336	20
35337-35578	23
35579-35882	24

### CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

<b>2 CFR</b>	1003	33875
<b>Proposed Rules:</b>	<b>Proposed Rules:</b>	
33	1003	34654
<b>3 CFR</b>	<b>9 CFR</b>	
<b>Proclamations:</b>	93	31930
8262	<b>Proposed Rules:</b>	
8263	130	31771
8264	<b>10 CFR</b>	
8265	40	32453
8266	50	31607
8267	72	32453, 33291
8268	73	32453
8269	74	32453
8270	150	32453
<b>Executive Orders:</b>	170	32386
12989 (Amended by	171	32386
EO 13465)	905	35059
13159 (See Notice of	1017	32637
June 18, 2008)	<b>Proposed Rules:</b>	
13405 (See Notice of	71	31946
June 6, 2008)	430	32243
13465	431	34094
<b>Administrative Orders:</b>	<b>12 CFR</b>	
Presidential	202	33662
Determinations:	303	35337
No. 08-20 of June 4,	652	31937
2008	<b>Proposed Rules:</b>	
<b>Notices:</b>	535	31648
Notice of June 6,	Ch. VI	35335
2008	615	33931
Notice of June 18,	701	34366
2008	706	31648
<b>4 CFR</b>	<b>14 CFR</b>	
21	23	34843, 35062
<b>5 CFR</b>	27	31608, 33876
250	29	31608
Ch. LXVIII	39	31351, 31353, 31355,
<b>Proposed Rules:</b>		31749, 32648, 32985, 32987,
295		32988, 32991, 32993, 32996,
731		32998, 33000, 33663, 33876,
<b>6 CFR</b>		34605, 34608, 34611, 34613,
<b>Proposed Rules:</b>		34615, 34618, 34620, 34622,
5		34624, 34844, 34847, 34849,
<b>7 CFR</b>		34851, 34854
301	71	31608, 32235, 33294,
305		33295, 33296, 33297, 33665,
762		33666
955	97	33666, 33669
1170	121	33879
<b>Proposed Rules:</b>	135	33879
301	201	33326
305	204	33326
318	205	33326
319	211	33326
1000	212	33326
<b>8 CFR</b>	213	33326
217	217	33326
	241	33326

243.....33326  
 291.....33326  
 298.....33326  
 325.....33326  
 330.....33326  
 331.....33326  
 382.....33326  
 1260.....33670

**Proposed Rules:**  
 39.....31780, 32245, 32246,  
 32248, 32250, 32252, 32253,  
 32255, 32256, 32258, 32486,  
 32488, 32491, 32493, 32495,  
 32497, 32659, 33025, 33738,  
 33740, 33743, 34224, 34228,  
 34233, 34663, 35089, 35092,  
 35093, 35095, 35098, 35361,  
 35593, 35595, 35597, 35598,  
 35601, 35603  
 71.....33940

**15 CFR**  
 30.....31548  
 303.....34856  
 736.....33671  
 740.....33671  
 772.....33882  
 774.....33882  
 2004.....35063  
**Proposed Rules:**  
 909.....34995

**16 CFR**  
 24.....34626  
**Proposed Rules:**  
 260.....32662  
 317.....32259  
 437.....34895

**17 CFR**  
 200.....32222  
 201.....32222  
 202.....32222  
 203.....32222  
 209.....32222  
 229.....32794  
 230.....32222, 32794  
 232.....32222, 32794, 33002,  
 33298  
 239.....32794  
 240.....32222, 32794  
 249.....32222, 32794  
 249b.....32222  
 260.....32222  
 270.....32222  
 274.....32222  
 275.....32222  
 279.....32222

**Proposed Rules:**  
 150.....32260, 32261  
 230.....35442  
 232.....35442  
 239.....35442  
 270.....35442  
 274.....35442

**19 CFR**  
 10.....33299, 33673  
 24.....33673  
 122.....35339  
 162.....33673  
 163.....33673  
 178.....33673  
 192.....32466

**20 CFR**  
**Proposed Rules:**  
 404.....33745, 35100  
 408.....33745  
 416.....33745, 35100  
 422.....33745  
 501.....35102

**21 CFR**  
 510.....35340  
 520.....33691, 33692, 34184,  
 35340, 35579  
 522.....31357  
 558.....34184, 35340  
 800.....34857  
 801.....31358, 34857  
 803.....33692  
 808.....34857  
 814.....34857  
 821.....34857  
 860.....34857, 35341  
 862.....35341  
 864.....35341  
 866.....35341  
 868.....35341  
 872.....35341  
 874.....35341  
 876.....34857, 35341  
 878.....35341  
 880.....35341  
 882.....34857, 35341  
 884.....34857  
 886.....34857, 35341  
 888.....35341  
 890.....34857, 35341  
 892.....35341  
 1005.....34857  
 1010.....34857

**Proposed Rules:**  
 15.....33027  
 310.....34895  
 801.....31390  
 803.....33749

**22 CFR**  
 62.....34861, 35066

**23 CFR**  
 774.....31609

**24 CFR**  
 3286.....35270  
**Proposed Rules:**  
 203.....32632, 33941

**25 CFR**  
 292.....35579

**26 CFR**  
 1.....32629, 33301, 34185,  
 35580, 35583  
 301.....32629  
 602.....35583

**Proposed Rules:**  
 1.....32499, 32500, 34237,  
 34560, 34665, 34670, 35606  
 20.....34560  
 25.....34560  
 26.....34560  
 31.....34560  
 40.....34560  
 41.....34560  
 44.....34560  
 53.....34560  
 54.....34560

55.....34560  
 56.....34560  
 156.....34560  
 157.....34560  
 301.....32503, 34560

**27 CFR**  
**Proposed Rules:**  
 9.....34902

**28 CFR**  
**Proposed Rules:**  
 0.....33955  
 20.....34905  
 35.....34466  
 36.....34466  
 75.....32262  
 100.....31648  
 549.....33957

**29 CFR**  
 4022.....33695  
 4044.....33695  
**Proposed Rules:**  
 403.....34913  
 408.....34913

**30 CFR**  
 291.....34630  
 948.....33884

**Proposed Rules:**  
 6.....35026  
 7.....34140  
 14.....35026  
 18.....35026, 35067  
 48.....35026  
 75.....34140, 35026  
 250.....33333  
 700.....35214  
 724.....35214  
 773.....35214  
 785.....35214  
 816.....35214  
 817.....35214  
 845.....35214  
 846.....35214  
 870.....35214  
 872.....35214  
 873.....35214  
 874.....35214  
 875.....35214  
 876.....35214  
 879.....35214  
 880.....35214  
 882.....35214  
 884.....35214  
 885.....35214  
 886.....35214  
 887.....35214  
 944.....35607  
 950.....31392

**31 CFR**  
 535.....32650  
 536.....32650  
 537.....32650  
 538.....32650  
 539.....32650  
 540.....32650  
 541.....32650  
 542.....32650  
 545.....32650  
 560.....32650  
 585.....32650  
 586.....32650  
 587.....32650

588.....32650  
 593.....32650  
 594.....32650  
 595.....32650

**32 CFR**  
 706.....34862, 35585, 35587

**33 CFR**  
 1.....34998  
 40.....34998  
 62.....34998  
 66.....34998  
 80.....34998  
 84.....34998  
 100.....31360, 34998, 35341  
 101.....34998  
 104.....34190, 34998  
 105.....34998  
 110.....34998  
 114.....34998  
 115.....34998  
 116.....34998  
 117.....31610, 32236, 32237,  
 33005, 34864, 34865, 34866,  
 34867, 34998  
 118.....34998  
 126.....34998  
 135.....34998  
 150.....34191  
 151.....34995, 34998  
 153.....34998  
 154.....34998  
 155.....34998  
 156.....34998  
 157.....34998  
 158.....34998  
 159.....34998  
 161.....34998  
 162.....34998  
 164.....34998  
 165.....31363, 31612, 33005,  
 33302, 34191, 34195, 34867,  
 34870, 34872, 34998, 35342,  
 35344, 35346, 35348, 35588  
 166.....34998  
 173.....34998  
 174.....34998  
 179.....34998  
 181.....34998  
 183.....34998  
 187.....34998

**Proposed Rules:**  
 100.....31394, 33961  
 151.....32273, 34995  
 165.....31397, 31652, 31782,  
 31785, 33028, 33030, 33033,  
 33337, 33341, 33751  
 334.....32665, 33344

**34 CFR**  
 668.....35472  
 673.....35472  
 674.....35472  
 675.....35472  
 676.....35472  
 682.....35472  
 685.....35472  
 686.....35472  
 690.....35472

**Proposed Rules:**  
 222.....31592

**36 CFR**  
 242.....35726  
 1281.....34197

<b>Proposed Rules:</b>	302.....31756	<b>45 CFR</b>	40.....33326, 33735
223.....34239	372.....32466	706.....33727	195.....31634
228.....34239	<b>Proposed Rules:</b>	<b>Proposed Rules:</b>	217.....33888
261.....34239	52.....31415, 31663, 31947,	309.....32668, 33048	218.....33888
292.....34239	32274, 33754, 35111	310.....32668, 33048	571.....32473
293.....34239	60.....31416, 32667, 33642,	<b>47 CFR</b>	572.....33903
<b>37 CFR</b>	34072	20.....33324	585.....32473
41.....32938	63.....33013, 33258, 34072	73.....32241	1002.....34649
<b>Proposed Rules:</b>	82.....34676, 35363	90.....33728, 34201	<b>Proposed Rules:</b>
1.....31655, 34672	152.....33035	<b>48 CFR</b>	260.....32515
2.....33345, 33356	156.....33035	Ch. 1.....33636, 33640	383.....32520
3.....33356	165.....33035	4.....33636	384.....32520
6.....33356	180.....31788, 34678	15.....33636	385.....32520
7.....33356	300.....33758, 33759, 33760	25.....33636	531.....34242
41.....31655	721.....32508	52.....33636	571.....31663
201.....31399	<b>42 CFR</b>	<b>Proposed Rules:</b>	580.....35617
<b>38 CFR</b>	418.....32088	2.....33374	<b>50 CFR</b>
3.....31753	<b>Proposed Rules:</b>	3.....34600	18.....33212
21.....31742	5.....31418	9.....34600, 34686	32.....33158
38.....35351	51c.....31418	12.....33374	100.....35726
39.....35351	<b>43 CFR</b>	22.....33374	216.....34875
<b>39 CFR</b>	3000.....35591	52.....33374, 34600, 34686	300.....31380
111.....31943, 32238	3100.....35591	501.....34240	600.....35778
<b>40 CFR</b>	3150.....35591	517.....32274	635.....31380, 35778
35.....35071	3200.....35591	519.....32669	648.....31769, 31770, 33922,
52.....31366, 31368, 31614,	3500.....35591	533.....32514	33924, 35084
32239, 32240, 33696, 34874,	3580.....35591	537.....32276	679.....31646, 3330, 33331,
35071, 35074	3600.....35591	542.....35614	33322
60.....31372, 31376, 34875,	3730.....35591	543.....35615	680.....33925, 35084
35838	3810.....35591	547.....32277	<b>Proposed Rules:</b>
82.....33007, 33304, 34644	3830.....35591	552.....32276, 32277, 32514,	17.....31418, 31665, 32629,
89.....35591	<b>Proposed Rules:</b>	32669, 35614, 35615	33968, 34686
122.....33697	3500.....35609	<b>49 CFR</b>	20.....34692
141.....31616	<b>44 CFR</b>	1.....33326	32.....33202
180.....31753, 33013, 33018,	64.....33311	7.....33326	216.....31666, 35510
33708, 33714	65.....33313, 33315, 35077	10.....33326	224.....32521
261.....31756	67.....31944, 33317, 33321,	24.....33326	229.....32278, 33760, 35623
271.....31634	35079, 35083	26.....33326	600.....32526, 33381
300.....33718, 33721, 33724	<b>Proposed Rules:</b>	31.....33326	622.....31669, 32281
	67.....33372, 35112	37.....33326	700.....31807



**REMINDERS**

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

**RULES GOING INTO EFFECT JUNE 24, 2008****DEFENSE DEPARTMENT****Navy Department**

Certifications and Exemptions under the International Regulations for Preventing Collisions at Sea (1972); published 6-24-08

**ENVIRONMENTAL PROTECTION AGENCY**

Amendments to National Emission Standards for Hazardous Air Pollutants for Area Sources; published 3-26-08

Regulation of Fuels and Fuel Additives:

Revised Definition of Substantially Similar Rule for Alaska; published 4-25-08

Standards of Performance for Petroleum Refineries; published 6-24-08

**HEALTH AND HUMAN SERVICES DEPARTMENT****Food and Drug Administration**

Oral Dosage Form New Animal Drugs; Sulfachlorpyridazine Powder; published 6-24-08

**INTERIOR DEPARTMENT****Indian Affairs Bureau**

Gaming on Trust Lands Acquired After October 17, 1988; Correction; published 6-24-08

**INTERIOR DEPARTMENT****Land Management Bureau**

Oil and Gas Leasing; Geothermal Resources Leasing; Coal Management; Management of Solid Minerals Other Than Coal; Mineral Materials Disposal; and Mining Claims; published 6-24-08

**TREASURY DEPARTMENT****Internal Revenue Service**

Guidance for Determining the Basis of Property Acquired in Certain Nonrecognition Transactions; published 6-24-08

Guidance Under Section 664 Regarding the Effect of Unrelated Business Taxable Income on Charitable

Remainder Trusts; published 6-24-08

**COMMENTS DUE NEXT WEEK****AGRICULTURE DEPARTMENT****Forest Service**

Subsistence Management Regulations for Public Lands in Alaska; (2009 and 2010 and 2010-2011):

Subsistence Taking of Fish and Shellfish Regulations; comments due by 6-30-08; published 4-17-08 [FR E8-07841]

**COMMERCE DEPARTMENT****National Oceanic and Atmospheric Administration**

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:

Shrimp Fishery of the Gulf of Mexico; Revisions to Allowable Bycatch Reduction Devices; comments due by 7-3-08; published 6-3-08 [FR E8-12324]

Fisheries of the Exclusive Economic Zone Off Alaska: Recordkeeping and Reporting; comments due by 6-30-08; published 5-29-08 [FR E8-12009]

Marine Mammals:

Subsistence Taking of Northern Fur Seals; Harvest Estimates; comments due by 7-3-08; published 6-3-08 [FR E8-12323]

**COMMERCE DEPARTMENT Patent and Trademark Office**

Revision of Patent Fees for Fiscal Year (2009); comments due by 7-3-08; published 6-3-08 [FR E8-12364]

**DEFENSE DEPARTMENT**

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 7-1-08; published 5-2-08 [FR E8-09715]

**ENVIRONMENTAL PROTECTION AGENCY**

Approval and Promulgation of Air Quality Implementation Plans:

Minnesota; Interstate Transport of Pollution; comments due by 7-2-08; published 6-2-08 [FR E8-12222]

Minnesota; Maintenance Plan Update for Dakota

County Lead Area; comments due by 7-3-08; published 6-3-08 [FR E8-12240]

Approval and Promulgation of Air Quality Implementation Plans; Delaware:

Reasonably Available Control Technology Under the 8-Hour Ozone National Ambient Air Quality Standard; comments due by 6-30-08; published 5-30-08 [FR E8-12122]

Approval and Promulgation of Implementation Plans:

Variance Determination for Particulate Matter from a Specific Source in the State of New Jersey; comments due by 6-30-08; published 5-29-08 [FR E8-11979]

Environmental Statements; Notice of Intent:

Coastal Nonpoint Pollution Control Programs; States and Territories—Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

Method 207 - Pre-Survey Procedure for Corn Wet-Milling Facility Emission Sources; comments due by 6-30-08; published 5-29-08 [FR E8-11882]

Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry, etc.; comments due by 7-2-08; published 6-2-08 [FR E8-11400]

Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry and Petroleum Refineries; comments due by 7-2-08; published 6-2-08 [FR E8-11384]

**FEDERAL COMMUNICATIONS COMMISSION**

Promoting Diversification of Ownership in the Broadcasting Services; Correction; comments due by 6-30-08; published 5-29-08 [FR E8-11776]

**FEDERAL TRADE COMMISSION**

Business Opportunity Rule; comments due by 7-1-08; published 6-19-08 [FR E8-13899]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

Designation of Medically Underserved Populations

and Health Professional Shortage Areas; comments due by 6-30-08; published 6-2-08 [FR 08-01314]

**HOMELAND SECURITY DEPARTMENT****Coast Guard**

Drawbridge Operation Regulations:

Smith Creek at Wilmington, NC; comments due by 6-30-08; published 5-15-08 [FR E8-10801]

Safety Zone; Gulf of Mexico - Johns Pass, FL; comments due by 6-30-08; published 5-29-08 [FR E8-11866]

Special Local Regulations for Marine Events; Patapsco River, Inner Harbor, Baltimore, MD; comments due by 7-2-08; published 6-2-08 [FR E8-12151]

**HOMELAND SECURITY DEPARTMENT****Federal Emergency Management Agency**

Proposed Flood Elevation Determinations; comments due by 7-2-08; published 4-3-08 [FR E8-06913]

**INTERIOR DEPARTMENT****Fish and Wildlife Service**

Endangered and Threatened Wildlife and Plants:

Initiation of 5-Year Status Reviews for 70 Species in Idaho, Montana, Oregon, Washington, and the Pacific Islands; comments due by 6-30-08; published 4-29-08 [FR E8-09198]

Environmental Statements; Availability, etc.:

Sheldon National Wildlife Refuge; Lakeview, OR; comments due by 6-30-08; published 5-12-08 [FR E8-10480]

General Regulations for Areas Administered by the National Park Service and the Fish and Wildlife Service; comments due by 6-30-08; published 4-30-08 [FR E8-09606]

Subsistence Management Regulations for Public Lands in Alaska; (2009 and 2010 and 2010-2011):

Subsistence Taking of Fish and Shellfish Regulations; comments due by 6-30-08; published 4-17-08 [FR E8-07841]

**INTERIOR DEPARTMENT****National Park Service**

General Regulations for Areas Administered by the National Park Service and the Fish and Wildlife

Service; comments due by 6-30-08; published 4-30-08 [FR E8-09606]

**INTERIOR DEPARTMENT  
Surface Mining Reclamation  
and Enforcement Office**

Remining Incentives; comments due by 6-30-08; published 5-1-08 [FR E8-09564]

**NATIONAL CREDIT UNION  
ADMINISTRATION**

Credit Union Service Organizations; comments due by 6-30-08; published 5-1-08 [FR E8-09457]

**NATIONAL  
TRANSPORTATION SAFETY  
BOARD**

Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records; comments due by 6-30-08; published 3-31-08 [FR E8-06393]

**POSTAL REGULATORY  
COMMISSION**

Universal Service Obligation; comments due by 6-30-08; published 4-30-08 [FR E8-09464]

**TRANSPORTATION  
DEPARTMENT**

**Federal Aviation  
Administration**

Airworthiness Directives:

Cessna Aircraft Company 172, 175, 180, 182, 185, 206, 207, 208, 210, and 303 Series Airplanes; comments due by 7-1-08; published 5-2-08 [FR E8-09719]

Hawker Beechcraft Corporation Model 390 Airplanes; comments due by 6-30-08; published 5-1-08 [FR E8-09566]

Rolls-Royce plc (RR) Models Trent 768-60, 772-60, 772B 60, and 772C-60 Turbofan Engines; comments due by 6-30-08; published 5-30-08 [FR E8-12061]

Stemme GmbH & Co. KG Model S10-VT Powered Sailplanes; comments due by 7-2-08; published 6-2-08 [FR E8-12115]

Various Aircraft Equipped With Honeywell Primus II RNZ 850 etc., Integrated Navigation Units; comments due by 7-3-08; published 5-19-08 [FR E8-11104]

Proposed Establishment of Class D Airspace:

Victoria, TX; comments due by 7-3-08; published 5-19-08 [FR E8-10953]

**TRANSPORTATION  
DEPARTMENT**

**National Highway Traffic  
Safety Administration**

Average Fuel Economy Standards:

Passenger Cars and Light Trucks, Model Years 2011-2015; comments due by 7-1-08; published 5-2-08 [FR 08-01186]

Passenger Car Average Fuel Economy Standards:

Model Years 2008-2020 and Light Truck Average Fuel Economy Standards — Model Years 2008-2020; Request for Product Plan Information; comments due by 7-1-08; published 5-2-08 [FR 08-01185]

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**LIST OF PUBLIC LAWS**

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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>.

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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.

**S. 2420/P.L. 110-247**

Federal Food Donation Act of 2008 (June 20, 2008; 122 Stat. 2314)

**Last List June 20, 2008**

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